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IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No.

EUGENE R. BROWN and RONALD A. GRAY,

Petitioners,

v.

D.C. TRANSIT SYSTEM, INC. and WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled case on February 28, 1975, with the Petition for Rehearing and Petition for Suggestion of Rehearing *En Banc* having been denied on April 2, 1975.

CITATIONS TO OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia is printed in Appendix B hereto, infra, pages 13b-18b. The opinion of the United States Court of Appeals for the District of Columbia Circuit is printed in Appendix B hereto, infra, pages 3b-12b. The Orders of the United States Court of Appeals for the District of Columbia Circuit respectfully denying rehearing and suggestion of rehearing *en banc* are printed in Appendix B hereto, infra, pages 1b-2b and are unreported.

JURISDICTION

The Judgment of the Circuit Court of Appeals was entered on February 28, 1975, with suggestions of rehearing and rehearing *en banc* being denied on April 2, 1975, (pages 1b-2b, infra). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1) and Rule 19(1)(b) of the Supreme Court Rules.

QUESTIONS PRESENTED

I. That the Court of Appeals overlooked or misapprehended the law regarding Appellant, Washington Metropolitan Area Transit Authority in failing to determine whether or not its conduct was "private" or "governmental action".

II. That the Court of Appeals misapprehended the law and erred as a matter of law in failing to consider all the criteria in analyzing the nature and character of

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D.C. Transit System, Inc., in determining the nexus with the "State" or "Federal" body to establish "state action" or "governmental action" subject to due process restraints and that there is a sufficient relationship to establish such nexus pursuant to *Jackson v. Metropolitan Edison*, 95 S. Ct. 449 (1974).

III. The Court of Appeals did err in failing to affirm the District Court holding, that when the Petitioners Eugene R. Brown and Ronald A. Gray, were discharged by D.C. Transit System, Inc., Respondent, for failure to conform their facial hair to the styling required by D.C. Transit Regulation No. 70-67, there was a violation of the Fifth Amendment Rights of Eugene R. Brown and Ronald A. Gray as a matter of substantive due process, and that such violation was extended to Respondent WMATA upon its refusal to reemploy Petitioners and the joinder of Respondent WMATA as a party defendant by Court order and Amended Complaint.

STATUTE INVOLVED

The statutory provision involved is the Constitution of the United States, Amendment V. The section is printed in Appendix A, infra, page 1a.

STATEMENT

By service of summons and complaint dated December 6, 1971, an action was commenced in the United States District Court for the District of Columbia for declaratory relief and to enjoin D.C. Transit System, Inc. from enforcing Regulation No. 70-67 which involved grooming standards for bus

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drivers. More particularly, the Regulation involved certain guidelines as to the length of a bus driver's hair as well as the growth of mustaches, beards and sideburns. The action had been commenced in the Federal District Court on the basis that the Plaintiff's rights of free expression, due process and equal protection as provided in First, Fifth, Ninth, and Fourteenth Amendments of the U.S. Constitution have been violated as well as discrimination in employment on the basis of sex in violation of Title 7 of the 1964 Civil Rights Act, 42 U.S.C. 2000 e-2 *et seq,* as well as 42 U.S.C. 1981 and U.S.C. 1983.

The Plaintiff's request for a preliminary injunction was denied and the case proceeded on the merits. On January 14, 1973, Respondent herein, Washington Metropolitan Area Transit Authority (herein WMATA), acquired certain assets of D.C. Transit System, Inc. Subsequently, upon the refusal of WMATA to reemploy the Plaintiffs in the case, by Motion, Amended Complaint and Order of the District Court, Respondent WMATA was added as a Defendant on March 12, 1973, and thereafter participated actively.

Subsequently, Cross-Motions for Summary Judgment were filed and hearing and argument heard thereon.

On May 15, 1973, by Memorandum of Decision and Order the Honorable Judge Barrington D. Parker partially granted Plaintiff's Motion for Summary Judgment finding the regulations in question as to both Defendants in the case were a violation of substantive due process under the Fifth Amendment to the Constitution of the United States. The District Court specifically held that there had been sufficient regulatory supervision by the District of Columbia over the past operations of D.C. Transit and the present

operations of WMATA to consider the actions of these bodies to be under color of law. Relief was denied under 42 U.S.C. 1981 and 42 U.S.C. 1983, as well as 42 U.S.C. 2000 e-2. Thereafter, on September 19, 1973, the Defendants filed a Notice of Appeal to the United States Court of Appeals for the District of Columbia Circuit. No appeal was noted by the Plaintiffs.

On February 28, 1975, the United States Court of Appeals for the District of Columbia Circuit reversed the decision of the Honorable Barrington Parker as to both Defendants and Appellants' Petitions for Rehearing or, in the Alternative, a Suggestion of Rehearing *En Banc* were respectively denied by the Court of Appeals on April 2, 1975. The United States Court of Appeals held that substantive due process was not applicable to D.C. Transit System, Inc., on the basis that, under the Supreme Court decision of *Jackson v. Metropolitan Edison Company, supra,* public utility type agencies, privately owned, even though operated under a certificate of public convenience, etc. were not considered to be acting in such a matter as to constitute state or governmental action. The substantive issues relating to the regulation itself were never reached, the United States Court of Appeals concluding that no jurisdiction existed.

REASONS FOR GRANTING THE WRIT

(1) Beginning on Page Two, the Honorable United States Court of Appeals, in its decision, (Appendix B, infra, page 4b), refers to D.C. Transit System, Inc.,

Appellant, thereafter identified as "Transit". The only reference to the Washington Metropolitan Area Transit Authority as a party to the action would appear to be on Page Three of the Decision (Appendix B, infra, page 5b), in footnote 3, where it is quite correctly stated that Washington Metropolitan Area Transit Authority, Appellant (herein WMATA), was created pursuant to an interstate compact, authorized by Public Law 89-774, 80 Stat. 1324, 1966. It is further correctly stated that WMATA acquired certain assets of D.C. Transit System, Inc., as of January 14, 1973, and was not added as a party to the action herein until March 12, 1973. The decision of the Court of Appeals proceeded to conclude that the "exclusive franchise" of D.C. Transit System, Inc., Appellant, lacked controlling significance and that it was a private corporation, privately funded and as such had no different status than is possessed by any corporation organized under the laws of the District of Columbia or one created pursuant to a special act of Congress. While the Court concluded that Transit was subject to regulation by the Public Utilities Commission, the Court found this to be immaterial.

Considering *Public Utilities Commission v. Pollak*, 343 U.S. 451 (1952), the Court of Appeals concluded that there was not a sufficiently close relationship between the Federal Government and the actions of D.C. Transit System, Inc. in the present case. Further considering *Jackson v. Metropolitan Edison Company*, *supra*, the Court of Appeals noted the recognition by the Supreme Court that it is often a close question as to whether particular action is "private" or "state action", bringing attention to the fact that the Supreme Court in *Jackson*, *supra*, indicated that the Company

was a privately owned public utility and the fact that it operated under a certificate of public convenience and necessity was not controlling even though such certificate was issued by the Pennsylvania Public Utilities Commission. The Court of Appeals proceeded to indicate that at the time of the discharge of these Appellees, Transit was in precisely the same situation as the Utility named in *Jackson, supra.* The Court further concluded that Transit may be distinguishable from a private employer who has extensive private competition and adopts grooming standards in the interest of keeping up with or gaining ground on that competition but noted that even a public utility with monopoly or quasi-monopoly status has an interest in consumer acceptance of its services and that the utility (Transit) herein by the issuance of a grooming regulation governing its employees does not create a "nexus" with the state necessary for its classification as "state action" subject to due process restraints where, as the Court concluded in the present case, there has been no involvement whatever of an agency of government, federal or "state".

All of the above criteria, reasoning and legal conclusions were applied solely to D.C. Transit System, Inc., and not to WMATA.

The Honorable District Court of the United States in its Memorandum Opinion (Appendix B, infra, page 13b) indicated sufficient regulatory supervision by the District of Columbia over the past operations of D.C. Transit System, Inc. and the present operations of WMATA to consider the actions of these bodies to be under color of state law and ordered the Defendant, Washington Metropolitan Area Transit Authority to reinstate the

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Plaintiffs to their former employment with full restoration of seniority. Thus, the Honorable District Court applied its decision and conclusions of law to both D.C. Transit System, Inc. and WMATA.

Assuming, arguendo, that the actions of D.C. Transit System, Inc. and the other facts and circumstances relating thereto do not establish the required "nexus" with the state necessary for the creation of "state action" there is certainly sufficient substance for a conclusion of "state action" or "governmental action" with regard to WMATA. More than acting under a complete monopoly, it is not a private corporation; it is not privately funded and has a completely different status than any other entity organized under the laws of the District of Columbia. It is a public transit authority, not a privately owned Public Utility like Metropolitan Edison or D.C. Transit System, Inc., and it is respectfully submitted that the appropriate "nexus" is established with regard to Respondent, WMATA, pursuant to the argument set forth hereinafter regarding D.C. Transit System, Inc., in view of *Public Utilities Commission v. Pollak, supra, Burton v. Wilmington Parking Authority*, 365 U.S. 715, 81 S. Ct. 856, 6 L.Ed.2d 45 (1961), *Jackson v. Metropolitan Edison Company*, 95 S. Ct. 449 (1974), *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 92 S. Ct. 1965, 32 L.Ed. 627 (1972), *Shelly v. Kraemer*, 334 U.S. 1, 68 S. Ct. 836, 92 L.Ed. 1161, (1948) and *The Civil Rights Cases*, 109 U.S. 3, 3 S. Ct. 18, 27 L.Ed. 835 (1883).

(2) In holding the lack of the necessary "nexus" between the actions of D.C. Transit System, Inc. and any governmental agency, federal or "state", the Court of Appeals observed that the existence of an exclusive

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franchise or monopoly lacks controlling significance as does the regulation of Transit by the Public Utilities Commission which the Court concluded to be immaterial for one reason, being the Commission had exercised no jurisdiction. This amounts to a seriatum analysis of the various factors when, in fact, the appropriate viewpoint should be a cumulative one. First, there is undoubtedly a total complete monopoly without competition based upon an "exclusive franchise" granted by no less authority than the Congress of the United States. In addition, Transit provided an essential public service supplied on a continual basis. Thus, effectively Transit was a private entity exercising powers traditionally exclusively reserved to the government, whether state or Federal. The proof of this lies in the fact that the Transit System is now operated by WMATA which is a transit authority totally public in character created by Congressional Act and based upon a pact between three separate jurisdictions, two of which are states and one of which is, or was, a federal enclave. Moreover, while there was no investigation by the Public Utilities Commission here, and no Order or hearing by the Commission, it is clear that Appellees pursued the only avenues available to them which involved the procedures established by Union-Management agreement. These involved a hearing by an Appearance Committee and the filing of a Grievance with the Union. The result of the first action was discharge from employment and the second was nothing. As well, Petitioners sought the only other avenue available, a complaint with the Human Rights Commission of the District of Columbia which governmental body confirmed Petitioner's rights in

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holding the Regulation in question invalid. The matter proceeded then to the Equal Employment Opportunity Commission which granted its Right to Sue Letter without other action. Thus, governmental agencies were involved.

(3) WMATA by its very creation and definition is a governmental agency and its actions pursuant to the Amended Complaint in failing to reinstate the Petitioners amounts to "governmental action", particularly in view of the fact that WMATA has participated throughout the proceedings since its acquisition of the operation of the Transit System in the Washington Metropolitan Area including not opposing their addition as parties to the action, answers thereto, and full participation amounting to tacit adoption of the violative regulation in question.

Certainly, as the Supreme Court observed in *Jackson, supra, The Civil Rights Cases, Supra,* affirmed the essential dichotomy set forth in the Fourteenth Amendment, and the Fifth Amendment, between deprivation by the state, and thus the Federal Government, subject to scrutiny under its provisions and private conduct, "however discriminatory and wrongful", against which the Fourteenth Amendment and thus, the Fifth Amendment, offers no shield. In *Shelly v. Kraemer, supra,* the Court declined to interfere with private action by contract or deed but declined to permit the enforcement of any agreement of the type and character therein set forth through the judicial process since such would clearly be "state action". The present situation cannot be described as non-analogous, in which the employer, whether Transit or WMATA will be empowered to use judicial process,

if necessary, to force employees to leave their employment or conform. As the Court further stated in *Jackson, supra,* the inquiry must be whether there is a sufficiently close "nexus" between the state and the challenged action of a regulated entity so that the action of the latter may be fairly treated as that of the state itself. However, the determination of that "nexus" does not reside in any single fact or relationship but in the aggregation of all relevant factors which, as in the present circumstance, whether as to Transit or WMATA, compels a finding of governmental responsibility. The factors cannot be considered sequentially and individually and discarded. They must be considered in a cumulative and aggregate fashion.

With regard to WMATA the factors need not be considered. It is a public agency, not privately funded, not privately organized but publicly founded and funded. It is not just one among many. They were and are the only public transportation system in existence.

In either case, they would not be unlike the situation in *Burton, supra,* since while Transit was a private lessee, in a sense, under certificate of authority by Congress, it operated under public mandate analogous to the publicly owned building in *Burton, supra.* WMATA is even in a stronger sense the government itself and not merely a public utility, privately owned and operated.

The Court of Appeals erred in failing to distinguish, or indicate a lack of distinction between D.C. Transit System, Inc. and WMATA. Alternatively it erred as outlined hereinbefore.

(4) With regard to WMATA particularly, its position is no different from that of the City of Coral Gables,

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Florida in *Linquist v. City of Coral Gables, Florida, et al*, 323 F. Supp. 1161 (S.D. Fla., 1971).

(5) There is great dispute in the country among the various Courts, both State and Federal, regarding the substantive issues to be reached in this case, once the jurisdictional question is disposed of in favor of the Petitioners. Particularly, the Supreme Court has recently granted a Writ of Certiorari to the United States Court of Appeals for the Second Circuit in the case of *Barry v. Dwen*, 74-1269. In the case of *Barry v. Dwen*, 483 F.2d 1126 (1973), the United States Court of Appeals for the Second Circuit held a regulation, effectively identical to the one in question herein, unconstitutional in violating the due process clause of the Fourteenth Amendment due to the failure to establish a legitimate state interest regarding hair length. The action of the United States Court of Appeals for the Second Circuit was by way of affirmation of the judgment of the District Court without opinion.

The decisions of the Second Circuit Court of Appeals are directly in conflict with the decisions of the United States Court of Appeals for the Eighth Circuit in the case of *Stradley v. Anderson*, 478 F.2d 188. The conflict does not stop there. See *Stull v. School Board of the Western Beaver Junior-Senior High School*, 459 F.2d 339 (3rd Cir. 1972); *Richards v. Thurston*, 424 F.2d 1281 (1st Cir. 1970). See also *Landsdale v. Tyler Junior College*, 470 F.2d 659, 669 (5th Cir., 1972).

Regarding the substantive issue, the Supreme Court itself has not been without controversy. See *Olff v. East Side Union High School District*, 402 U.S. 1042 (1972) (Douglas J., dissenting from denial of Certiorari). Thus, the present case is companion in substance

to *Barry v. Dwen, supra,* which is presently pending for hearing before the Supreme Court. Moreover, based upon the present status of the law and the decision of the United States Court of Appeals for the District of Columbia Circuit, we now have a peculiar situation in which the jurisdictional question involving such Transit Authorities as WMATA remains unidentified and undelineated.

CONCLUSION

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Dated: July 1, 1975.

Respectfully submitted,

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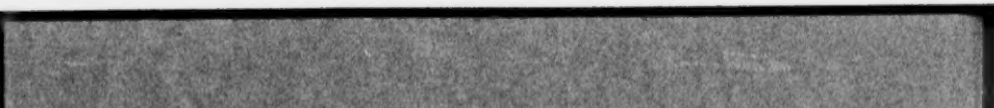

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APPENDIX A

AMENDMENT V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

SUBCHAPTER IV.—WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY COMPACT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1-1441.

§ 1-1431. Consent of Congress given for, and adoption of, compact amending compact set out under section 1-1410.

The Congress hereby consents to, adopts and enacts for the District of Columbia an amendment to the Washington Metropolitan Area Transit Regulation Compact, for which Congress heretofore has granted its consent (subchapter II of this chapter) by adding thereto title III, known as the Washington Metropolitan Area Transit Authority Compact (referred to in this subchapter as title III), substantially as set out below. (Nov. 6, 1966, 80 Stat. 1324, Pub. L. 89-774, § 1.)

CODIFICATION

In the original, words "substantially as set out below" read "substantially as follows:". The words first quoted have been subtituted for purpose of convenient text classification of the provisions of this section. The "amendment" referred to, known as the Washington Metropolitan Area Transit Authority Compact, is set out in note below.

AMENDMENTS

1972—Pub. (1) and (2) of § 101(a) of Act Oct. 21, 1972, Pub. L. 92-517, 86 Stat. 1000, amended articles XII and XVI of title III of the Washington Metropolitan Area Transit Regulation Compact as follows: (1) by adding at the end of section 56 a new par. (e), and (2) by striking out "or by a private transit company" at the end of section 62(a) and inserting in lieu thereof "whenever such property cannot be acquired by negotiated purchase at a price satisfactory to the Authority".

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PREAMBLE

The preamble to act Nov. 6, 1966, 80 Stat. 1324, Pub. L. 89-774, provided:

"Whereas Congress heretofore has declared in the National Capital Transportation Act of 1960 (Public Law 86-669, 74 Stat. 537 [D.C. Code § 1-1401 et seq.]) and in the National Capital Transportation Act of 1965 (Public Law 89-173, 79 Stat. 663 [D.C. Code § 1-1421 et seq.]) that a coordinated system of rail rapid transit, bus transportation service, and highways is essential in the National Capital Region for the satisfactory movement of people and goods, the alleviation of present and future traffic congestion, the economic welfare and vitality of all parts of the Region, the effective performance of the functions of the United States Government located within the Region, the orderly growth and development of the Region, the comfort and convenience of the residents and visitors to the Region, and the preservation of the beauty and dignity of the Nation's Capital and that such a system should be developed cooperatively by the Federal, State, and local governments of the National Capital Region, with the costs of the necessary facilities financed, as far as possible, by persons using or benefiting from such facilities and the remaining costs shared equitably among the Federal, State, and local governments;

"Whereas in furtherance of this policy, Congress, in title III of the National Capital Transportation Act of 1960 [D.C. Code §§ 1-1408, 1-1409], authorized the District of Columbia, the Commonwealth of Virginia, and the State of Maryland to negotiate a Compact for the establishment of an organization, empowered, inter alia, to provide regional transportation facilities;

"Whereas, it is the sense of the Congress that the Mass Transit Plan authorized by the Compact and this Act shall conform to the fullest extent practicable with the Comprehensive Plan for the National Capital and the general plan for the development of the National Capital Region prepared pursuant to the National Capital Planning Act of 1952 (Public Law 82-592, 66 Stat. 781 [D.C. Code § 1-1001 et seq.]); and

"Whereas, the District of Columbia, the Commonwealth of Virginia and the State of Maryland, with a representative of the United States appointed by the President, have negotiated such a Compact, known as the Washington Metropolitan Area Transit Authority Compact, which amends the Washington Metropolitan Area Transit Regulation Compact [D.C. Code § 1-1410 note], heretofore consented to by the Congress (Public Law 86-794, 74 Stat. 1031, as amended by Public Law 87-767, 76 Stat. 764) [D.C. Code § 1-1410 et seq.]), by adding thereto a title III and said Compact has been enacted by Maryland (Ch. 869, Acts of General Assembly 1965) and in substantially the same language by Virginia (Ch. 2, 1966 Acts of Assembly): Now, therefore, be it" (etc.).

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY COMPACT

The Washington Metropolitan Area Transit Authority Compact, referred to in this section, and constituting title III of the Washington Metropolitan Area Transit Regulation Compact of which titles I and II are set out as a note under § 1–1410, constituted the remainder of this section. The compact is as follows:

"TITLE III

"ARTICLE I

"DEFINITIONS

"1. As used in this Title, the following words and terms shall have the following meanings, unless the context clearly requires a different meaning:

"(a) 'Board' means the Board of Directors of the Washington Metropolitan Area Transit Authority;

"(b) 'Director' means a member of the Board of Directors of the Washington Metropolitan Area Transit Authority;

"(c) 'Private transit companies' and 'private carriers' means corporations, persons, firms or associations rendering transit service within the Zone pursuant to a certificate of public convenience and necessity issued by the Washington Metropolitan Area Transit Commission or by a franchise granted by the United States or any signatory party to this Title;

"(d) 'Signatory' means the State of Maryland, the Commonwealth of Virginia and the District of Columbia;

"(e) 'State' includes District of Columbia;

"(f) 'Transit facilities' means all real and personal property located in the Zone, necessary or useful in rendering transit service between points within the Zone, by means of rail, bus, water or air and any other mode of travel, including without limitation, tracks, rights of way, bridges, tunnels, subways, rolling stock for rail, motor vehicle, marine and air transportation, stations, terminals and ports, areas for parking and all equipment, fixtures, buildings and structures and services incidental to or required in connection with the performance of transit service;

"(g) 'Transit services' means the transportation of persons and their packages and baggage by means of transit facilities between points within the Zone including the transportation of newspapers, express, and mail between such points, and charter service which originates within the Zone but does not include taxicab service or individual-ticket-sales sightseeing operations; and

"(h) 'WMATC' means Washington Metropolitan Area Transit Commission.

"ARTICLE II

"PURPOSE AND FUNCTIONS

"Purpose

"2. The purpose of this Title is to create a regional instrumentality, as a common agency of each signatory party, empowered, in the manner hereinafter set forth,

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(1) to plan, develop, finance and cause to be operated improved transit facilities, in coordination with transportation and general development planning for the Zone, as part of a balanced regional system of transportation, utilizing to their best advantage the various modes of transportation, (2) to coordinate the operation of the public and privately owned or controlled transit facilities, to the fullest extent practicable, into a unified regional transit system without unnecessary duplicating service, and (3) to serve such other regional purposes and to perform such other regional functions as the signatories may authorize by appropriate legislation.

"ARTICLE III

"ORGANIZATION AND AREA

"Washington Metropolitan Area Transit Zone

"3. There is hereby created the Washington Metropolitan Area Transit Zone which shall embrace the District of Columbia, the cities of Alexandria, Falls Church and Fairfax and the counties of Arlington and Fairfax and political subdivisions of the Commonwealth of Virginia located within those counties, and the counties of Montgomery and Prince George's in the State of Maryland and political subdivisions of the State of Maryland located in said counties.

"Washington Metropolitan Area Transit Authority

"4. There is hereby created, as an instrumentality and agency of each of the signatory parties hereto, the Washington Metropolitan Area Transit Authority which shall be a body corporate and politic, and which shall have the powers and duties granted herein and such additional powers as may hereafter be conferred upon it pursuant to law.

"Board Membership

"5. (a) The Authority shall be governed by a Board of six Directors consisting of two Directors for each signatory. For Virginia, the Directors shall be appointed by the Northern Virginia Transportation Commission; for the District of Columbia by the City Council of the District of Columbia from among its members, the Commissioner and the Assistant to the Commissioner of the District of Columbia; and for Maryland, by the Washington Suburban Transit Commission. In each instance the Director shall be appointed from among the members of the appointing body, except as otherwise provided herein, and shall serve for a term coincident with his term on the body by which he was appointed. A director may be removed or suspended from office only as provided by the law of the signatory from which he was appointed. The appointing authorities shall also appoint an alternate for

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each Director, who may act only in the absence of the Director for whom he has been appointed an alternate, except that, in the case of the District of Columbia where only one Director and his alternate are present, such alternate may act on behalf of the absent Director. Each alternate shall serve at the pleasure of the appointing authority. In the event of a vacancy in the office of Director or alternate, it shall be filled in the same manner as an original appointment.

"(b) Before entering upon the duties of his office each Director and alternate director shall take and subscribe to the following oath (or affirmation) of office or any such other oath or affirmation, if any, as the Constitution or laws of the signatory he represents shall provide:

"'I, ----------, hereby solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and Laws of the state or political jurisdiction from which I was appointed as a director (alternate director) of the Board of Washington Metropolitan Area Transit Authority and will faithfully discharge the duties of the office upon which I am about to enter.'

"Compensation of Directors and Alternates

"6. Members of the Board and alternates shall serve without compensation but may be reimbursed for necessary expenses incurred as an incident to the performance of their duties.

"Organization and Procedure

"7. The Board shall provide for its own organization and procedure. It shall organize annually by the election of a Chairman and Vice-Chairman from among its members. Meetings of the Board shall be held as frequently as the Board deems that the proper performance of its duties requires and the Board shall keep minutes of its meetings. The Board shall adopt rules and regulations governing its meeting, minutes and transactions.

"Quorum and Actions by the Board

"8. (a) Four Directors or alternates consisting of at least one Director or alternate appointed from each Signatory, shall constitute a quorum and no action by the Board shall be effective unless a majority of the Board, which majority shall include at least one Director or alternate from each Signatory, concur therein; provided, however, that a plan of financing may be adopted or a mass transit plan adopted, altered, revised or amended by the unanimous vote of the Directors representing any two Signatories.

"(b) The actions of the Board shall be expressed by motion or resolution. Actions dealing solely with internal management of the Authority shall become effective when directed by the Board, but no other action shall become effective prior to the expiration of thirty days following its adoption; provided, however, that the Board may provide for the acceleration of any action upon a finding that such acceleration is required for the proper and timely performance of its functions.

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"Officers

"9. (a) The officers of the Authority, none of whom shall be members of the Board, shall consist of a general manager, a secretary, a treasurer, a comptroller and a general counsel and such other officers as the Board may provide. Except for the office of general manager and comptroller, the Board may consolidate any of such other offices in one person. All such officers shall be appointed and may be removed by the Board, shall serve at the pleasure of the Board and shall perform such duties and functions as the Board shall specify. The Board shall fix and determine the compensation to be paid to all officers and, except for the general manager who shall be a full-time employee, all other officers may be hired on a full-time or part-time basis and may be compensated on a salary or fee basis, as the Board may determine. All employees and such officers as the Board may designate shall be appointed and removed by the general manager under such rules of procedure and standards as the Board may determine.

"(b) The general manager shall be the chief administrative officer of the Authority and, subject to policy direction by the Board, shall be responsible for all activities of the Authority.

"(c) The treasurer shall be the custodian of the funds of the Authority, shall keep an account of all receipts and disbursements and shall make payments only upon warrants duly and regularly signed by the Chairman or Vice-Chairman of the Board, or other person authorized by the Board to do so, and by the secretary or general manager; provided, however, that the Board may provide that warrants not exceeding such amounts or for such purposes as may from time to time be specified by the Board may be signed by the general manager or by persons designated by him.

"(d) An oath of office in the form set out in Section 5(b) of this Article shall be taken, subscribed and filed with the Board by all appointed officers.

"(e) Each Director, officer and employees specified by the Board shall give such bond in such form and amount as the Board may require, the premium for which shall be paid by the Authority.

"Conflict of Interests

"10. (a) No Director, officer or employee shall:

"(1) be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the Board or the Authority is a party;

"(2) in connection with services performed within the scope of his official duties, solicit or accept money or any other thing of value in addition to the compensation or expenses paid to him by the Authority;

"(3) offer money or any thing of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the Authority.

"(b) Any Director, officer or employee who shall willfully violate any provision of this section shall, in the discretion of the Board, forfeit his office or employment.

"(c) Any contract or agreement made in contravention of this section may be declared void by the Board.

"(d) Nothing in this section shall be construed to abrogate or limit the applicability of any federal or state law which may be violated by any action prescribed by this section.

"ARTICLE IV

"PLEDGE OF COOPERATION

"11. Each Signatory pledges to each other faithful cooperation in the achievement of the purposes and objects of this Title.

"ARTICLE V

"GENERAL POWERS

"Enumeration

"12. In addition to the powers and duties elsewhere described in this Title, and except as limited in this Title, the Authority may:

"(a) Sue and be sued;

"(b) Adopt and use a corporate seal and alter the same at pleasure;

"(c) Adopt, amend, and repeal rules and regulations respecting the exercise of the powers conferred by this Title;

"(d) Construct, acquire, own, operate, maintain, control, sell and convey real and personal property and any interest therein by contract, purchase, condemnation, lease, license, mortgage or otherwise but all of said property shall be located in the Zone and shall be necessary or useful in rendering transit service or in activities incidental thereto;

"(e) Receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services may be transferred or made available to it by any signatory party, any political subdivision or agency thereof, by the United States, or by any agency thereof, or by any other public or private corporation or individual, and enter into agreements to make reimbursement for all or any part thereof;

"(f) Enter into and perform contracts, leases and agreements with any person, firm or corporation or with any political subdivision or agency of any signatory party or with the federal government, or any agency thereof, including, but not limited to, contracts or agreements to furnish transit facilities and service;

"(g) Create and abolish offices, employments and positions (other than those specifically provided for herein) as it deems necessary for the purposes of the Authority, and fix and provide for the qualification, appointment, removal, term, tenure, compensation, pension and retirement rights of its officers and employees without regard to the laws of any of the signatories;

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"(h) Establish, in its discretion, a personnel system based on merit and fitness and, subject to eligibility,

participate in the pension and retirement plans of any signatory, or political subdivision or agency thereof, upon terms and conditions mutually acceptable;

"(i) Contract for or employ any professional services;

"(j) Control and regulate the use of facilities owned or controlled by the Authority, the service to be rendered and the fares and charges to be made therefor;

"(k) Hold public hearings and conduct investigations relating to any matter affecting transportation in the Zone with which the Authority is concerned and, in connection therewith, subpena witnesses, papers, records and documents; or delegate such authority to any officer. Each director may administer oaths or affirmations in any proceeding or investigation;

"(l) Make or participate in studies of all phases and forms of transportation, including transportation vehicle research and development techniques and methods for determining traffic projections, demand motivations, and fiscal research and publicize and make available the results of such studies and other information relating to transportation; and

"(m) Exercise, subject to the limitations and restrictions herein imposed, all powers reasonably necessary or essential to the declared objects and purposes of this Title.

"ARTICLE VI

"PLANNING

"Mass Transit Plan

"13. (a) The Board shall develop and adopt, and may from time to time review and revise, a mass transit plan for the immediate and long-range needs of the Zone. The mass transit plan shall include one or more plans designating (1) the transit facilities to be provided by the Authority, including the locations of terminals, stations, platforms, parking facilities and the character and nature thereof; (2) the design and location of such facilities; (3) whether such facilities are to be constructed or acquired by lease, purchase or condemnation; (4) a timetable for the provision of such facilities; (5) the anticipated capital costs; (6) estimated operating expenses and revenues relating thereto; and (7) the various other factors and considerations, which, in the opinion of the Board, justify and require the projects therein proposed. Such plan shall specify the type of equipment to be utilized, the areas to be served, the routes and schedules of service expected to be provided and the probable fares and charges therefor.

"(b) In preparing the mass transit plan, and in any review of revision thereof, the Board shall make full utilization of all data, studies, reports and information available from the National Capital Transportation Agency and from any other agencies of the federal government, and from signatories and the political subdivisions thereof.

"Planning Process

"14. (a) The mass transit plan, and any revisions, alterations or amendments thereof, shall be coordinated, through the procedures hereinafter set forth, with

"(1) other plans and programs affecting transportation in the Zone in order to achieve a balanced system

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of transportation, utilizing each mode to its best advantage;

"(2) the general plan or plans for the development of the Zone; and

"(3) the development plans of the various political subdivisions embraced within the Zone.

"(b) It shall be the duty and responsibility of each member of the Board to serve as liaison between the Board and the body which appointed him to the Board. To provide a framework for regional participation in the planning process, the Board shall create technical committees concerned with planning and collection and analyses of data relative to decision-making in the transportation planning process and the Commissioners of the District of Columbia, the component governments of the Northern Virginia Transportation District and the Washington Suburban Transit District shall appoint representatives to such technical committees and otherwise cooperate with the Board in the formulation of a mass transit plan, or in revisions, alterations or amendments therof.

"(c) The Board, in the preparation, revision, alteration or amendment of a mass transit plan, shall

"(1) consider data with respect to current and prospective conditions in the Zone, including, without limitation, land use, population, economic factors affecting development plans, goals or objectives for the development of the Zone and the separate political subdivisions, transit demands to be generated by such development, travel patterns, existing and proposed transportation and transit facilities, impact of transit plans on the dislocation of families and businesses, preservation of the beauty and dignity of the Nation's Capital, factors affecting environmental amenities and aesthetics and financial resources;

"(2) cooperate with and participate in any continous, comprehensive transportation planning process cooperatively established by the highway agencies of the signatories and the local political subdivisions in the Zone to meet the planning standards now or hereafter prescribed by the Federal-Aid Highway Acts; and

"(3) to the extent not inconsistent with or duplicative of the planning process specified in subparagraph (2) of this paragraph (c), cooperate with the National Capital Planning Commission, the National Capital Regional Planning Council, the Washington Metropolitan Council of Governments, the Washington Metropolitan Area Transit Commission, the highway agencies of the Signatories, the Maryland-National Capital Park and Planning Commission, the Northern Virginia Regional Planning and Economic Development Commission, the Maryland State Planning Department and the Commission of Fine Arts. Such cooperation shall include the creation, as necessary, of technical committees composed of personnel, appointed by such agencies, concerned with planning and collection and analysis of data relative to decisionmaking in the transportation planning process.

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"Adoption of Mass Transit Plan

"15. (a) Before a mass transit plan is adopted, altered, revised or amended, the Board shall transmit such proposed plan, alteration, revision or amendment for comment to the following and to such other agencies as the Board shall determine:

"(1) the Commissioners of the District of Columbia, the Northern Virginia Transportation Commission and the Washington Suburban Transit Commission;

"(2) the governing bodies of the Counties and Cities embraced within the Zone;

"(3) the highway agencies of the Signatories;

"(4) the Washington Metropolitan Area Transit Commission;

"(5) the Washington Metropolitan Council of Governments;

"(6) the National Capital Planning Commission;

"(7) The National Capital Regional Planning Council;

"(8) the Maryland-National Capital Park and Planning Commission;

"(9) the Northern Virginia Regional Planning and Economic Development Commission;

"(10) the Maryland State Planning Department; and

"(11) the private transit companies operating in the Zone and the Labor Unions representing the employees of such companies and employees of contractors providing service under operating contracts.

"Information with respect thereto shall be released to the public. A copy of the proposed mass transit plan, amendment or revision, shall be kept at the office of the Board and shall be available for public inspection. After thirty days' notice published once a week for two successive weeks in one or more newspapers of general circulation within the Zone, a public hearing shall be held with respect to the proposed plan, alteration, revision or amendment. The thirty days' notice shall begin to run
Page 120 on the first day the notice appears in any such newspapers. The Board shall consider the evidence submitted and statements and comments made at such hearing and may make any changes in the proposed plan, amendment or revision which it deems appropriate and such changes may be made without further hearing.

"ARTICLE VII

"FINANCING

"Policy

"16. With due regard for the policy of Congress for financing a mass transit plan for the Zone set forth in Section 204(g) of the National Capital Transportation Act of 1960 (74 Stat. 537), it is hereby declared to be the policy of this Title that, as far as possible, the payment of all costs shall be borne by the persons using or benefiting from the Authority's facilities and services and any

remaining costs shall be equitably shared among the federal, District of Columbia and participating local governments in the Zone. The allocation among such governments of such remaining costs shall be determined by agreement among them and shall be provided in the manner hereinafter specified.

"Plan of Financing

"17. (a) The Authority, in conformance with said policy, shall prepare and adopt a plan for financing the construction, acquisition, and operation of facilities specified in a mass transit plan adopted pursuant to Article VI hereof, or in any alteration, revision or amendment thereof. Such of financing shall specify the facilities to be constructed or acquired, the cost thereof, the principal amount of revenue bonds, equipment trust certificates, and other evidences of debt proposed to be issued, the principal terms and provisions of all loans and underlying agreements and indentures, estimated operating expenses and revenues, and the proposed allocation among the federal, District of Columbia, and participating local governments of the remaining costs and deficits, if any, and such other information as the Commission may consider appropriate.

"(b) Such plan of financing shall constitute a proposal to the interested governments for financial participation and shall not impose any obligation on any government and such obligations shall be created only as provided in Section 18 of this Article VII.

"Commitments for Financial Participation

"18. (a) Commitments on behalf of the portion of the Zone located in Virginia shall be by contract or agreement by the Authority with the Northern Virginia Transportation District, or its component governments, as authorized in the Transportation District Act of 1964 (Ch. 631, 1964 Acts of Virignia Assembly), to contribute to the capital required for the construction and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or any alteration, revision or amendment thereof, and for meeting expenses and obligations in the operation of such facilities. No such contract or agreement, however, shall be entered into by the Authority with the Northern Virginia Transportation District unless said District has entered into the contracts or agreements with its member governments, as contemplated by Section 1(b)(4) of Article 4 of said Act, which contracts or agreements expressly provide that such contracts or agreements shall inure to the benefit of the Authority and shall be enforceable by the Authority in accordance with the provisions of Section 2, Article 5 of said Act, and such contracts or agreements are acceptable to the Board. The General Assembly of Virginia hereby authorizes and designates the Authority as the agency to plan for and provide transit facilities and services for the area of Virginia encompassed within the Zone within the contemplation of Article 1, Section 3(c) of said Act.

"(b) Commitments on behalf of the portion of the Zone located in Maryland shall be by contract or agreement by

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the Authority with the Washington Suburban Transit District, pursuant to which the Authority undertakes to provide transit facilities and service in consideration for the agreement by said District to contribute to the capital required for the construction and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or in any alteration, revision or amendment thereof, and for meeting expenses and obligations incurred in the operation of such facilities.

"(c) With respect to the District of Columbia and the federal government, the commitment or obligation to render financial assistance shall be created by appropriation or in such other manner, or by such other legislation, as the Congress shall determine. If prior to making such commitment by or on behalf of the District of Columbia, legislation is enacted by the Congress granting the governing body of the District of Columbia plenary power to create obligations and levy taxes, the commitment by the District of Columbia shall be by contract or agreement between the governing body of the District of Columbia and the Authority, pursuant to which the Authority undertakes, subject to the provisions of Section 20 hereof, to provide transit facilities and service in consideration for the undertaking by the District of Columbia to contribute to the capital required for the construction and/or acquisition of facilities specified in a mass transit plan adopted as provided in Article VI, or in any alteration, revision or amendment thereof, and for meeting expenses and obligations incurred in the operation of such facilities.

"Administrative Expenses

"19. Prior to the time the Authority has receipts from appropriations and contracts or agreements as provided in Section 18 of this Article VII, the expenses of the Authority for administration and for preparation of a mass transit and financing plan, including all engineering, financial, legal and other services required in connection therewith, shall, to the extent funds for such expenses are not provided through grants by the federal government, be borne by the District of Columbia, by the Washington Suburban Transit District and the component governments of the Northern Virginia Transportation District. Such expenses shall be allocated among such governments on the basis of population as reflected by the latest available population statistics of the Bureau of the Census; provided, however, that upon the request of any Director the Board shall make the allocation upon estimates of population acceptable to the Board. The allocations shall be made by the Board and shall be included in the annual current expense budget prepared by the Board.

"Acquisition of Facilities from Federal or Other Agencies

"20. (a) The Authority is authorized to acquire by purchase, lease or grant or in any manner other than condemnation, from the federal government, or any agency thereof, from the District of Columbia, Maryland or Virginia, or any political subdivision or agency thereof, any transit and related facilities, including real and per-

sonal property and all other assets, located within the Zone, whether in operation or under construction. Such acquisition shall be made upon such terms and conditions as may be agreed upon and subject to such authorization or approval by the Congress and the governing body of the District of Columbia, as may be required; provided, however, that if such acquisition imposes or may impose any further or additional obligation or liability upon the Washington Suburban Transit District, the Northern Virginia Transportation District, or any component government thereof, under any contract with the Authority, the Authority shall not make such acquisition until any such affected contract has been appropriately amended.

"(b) For such purpose, the Authority is authorized to assume all liabilities and contracts relating thereto, to assume responsibility as primary obligor, endorser or guarantor on any outstanding revenue bonds, equipment trust certificates or other form of indebtedness authorized in this Act issued by such predecessor agency or agencies and, in connection therewith, to become a party to, and assume the obligations of, any indenture or loan agreement underlying or issued in connection with any outstanding securities or debts.

"Temporary Borrowing

"21. The Board may borrow, in anticipation of receipts, from any signatory, the Washington Suburban Transit District, the Northern Virginia Transportation District

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or any component government thereof, or from any lending institution for any purposes of this title, including administrative expenses. Such loans shall be for a term not to exceed two years and at such rates of interest as shall be acceptable to the Board. The signatories and any such political subdivision or agency may, in its discretion, make such loans from any available money.

"Funding

"22. The Board shall not construct or acquire any of the transit facilities specified in a mass transit plan adopted pursuant to the provisions of Article VI of this Title, or in any alteration, revision or amendment thereof, nor make any commitments or incur any obligations with respect thereto until funds are available therefor.

"ARTICLE VIII

"BUDGET

"Capital Budget

"23. The Board shall annually adopt a capital budget, including all capital projects it proposes to undertake or continue during the budget period, containing a statement of the estimated cost of each project and the method of financing thereof.

"Current Expense Budget

"24. The Board shall annually adopt a current expense budget for each fiscal year. Such budget shall include the Board's estimated expenditures for administration,

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operation, maintenance and repairs, debt service requirements and payments to be made into any funds required to be maintained. The total of such expenses shall be balanced by the Board's estimated revenues and receipts from all sources, excluding funds included in the capital budget or otherwise earmarked for other purposes.

"Adoption and Distribution of Budgets

"25. (a) Following the adoption by the Board of annual capital and current expense budgets, the general manager shall transmit certified copies of such budgets to the principal budget officer of the federal government, the District of Columbia, the Washington Suburban Transit District and of the component governments of the Northern Virginia Transportation Commission at such time and in such manner as may be required under their respective budgetary procedures.

"(b) Each budget shall indicate the amounts, if any, required from the federal government, the Government of the District of Columbia, the Washington Suburban Transit District and the component governments of the Northern Virginia Transportation District, determined in accordance with the commitments made pursuant to Article VII, Section 18 of this Title, to balance each of said budgets.

"Payments

"26. Subject to such review and approval as may be required by their budgetary or other applicable processes, the federal government, the Government of the District of Columbia, the Washington Suburban Transit District and the component governments of the Northern Virginia Transportation District shall include in their respective budgets next to be adopted and appropriate or otherwise provide the amounts certified to each of them as set forth in the budgets.

"ARTICLE IX

"REVENUE BONDS

"Borrowing Power

"27. The Authority may borrow money for any of the purposes of this Title, may issue its negotiable bonds and other evidences of indebtedness in respect thereto and may mortgage or pledge its properties, revenues and contracts as security therefor.

"All such bonds and evidences of indebtedness shall be payable solely out of the properties and revenues of the Authority. The bonds and other obligations of the Authority, except as may be otherwise provided in the indenture under which they were issued, shall be direct and general obligations of the Authority and the full faith and credit of the Authority are hereby pledged for the prompt payment of the debt service thereon and for the fulfillment of all other undertakings of the Authority assumed by it to or for the benefit of the holders thereof.

"Funds and Expenses

"28. The purposes of this Title shall include, without limitation, all costs of any project or facility or any part thereof, including interest during a period of construction

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and for a period not to exceed two years thereafter and any incidental expenses (legal, engineering, fiscal, financial, consultant and other expenses) connected with issuing and disposing of the bonds; all amounts required for the creation of an operating fund, construction fund, reserve fund, sinking fund, or other special fund; all other expenses connected with administration, the planning, design, acquisition, construction, completion, improvement or reconstruction of any facility or any part thereof; and reimbursement of advances by the Board or by others for such purposes and for working capital.

"Credit Excluded; Officers, State, Political Subdivisions and Agencies

"29. The Board shall have no power to pledge the credit of any signatory party, political subdivision or agency thereof, or to impose any obligation for payment of the bonds upon any signatory party, political subdivision or agency thereof, but may pledge the contracts of such governments and agencies; provided, however, that the bonds may be underwritten in whole or in part as to principal and interest by the United States, or by any political subdivision or agency of any signatory; provided, further, that any bonds underwritten in whole or in part as to principal and interest by the United States shall not be issued without approval of the Secretary of the Treasury. Neither the Directors nor any person executing the bonds shall be liable personally on the bonds of the Authority or be subject to any personal liability or accountability by reason of the issuance thereof.

"Funding and Refunding

"30. Whenever the Board deems it expedient, it may fund and refund the bonds and other obligations of the Authority whether or not such bonds and obligations have matured. It may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds (including the payment of any premium, duplicate interest or each cash adjustment required in connection therewith) issued by the Authority or issued by any other issuing body, the proceeds of the sale of which have been applied to any facility acquired by the Authority or which are payable out of the revenues of any facility acquired by the Authority. Bonds may be issued partly to refund bonds and other obligations then outstanding, and partly for any other purpose of the Authority. All provisions of this Title applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

"Bonds; Authorization Generally

"31. Bonds and other indebtedness of the Atuhority shall be authorized by resolution of the Board. The validity of the authorization and issuance of any bonds by the Authority shall not be dependent upon nor affected in any way by: (i) the deposition of bond proceeds by the Board or by contract, commitment or action taken with respect to such proceeds; or (ii) the failure to complete any part of the project for which bonds are authorized to be issued. The Authority may issue bonds

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in one or more series and may provide for or more consolidated bond issues, in such principal amounts and with such terms and provisions as the Board may deem necessary. The bonds may be secured by a pledge of all or any part of the property, revenues and franchises under its control. Bonds may be issued by the Authority in such amount, with such maturities and in such denominations and form or forms, whether coupon or registered, as to principal alone or as to both principal and interest, as may be determined by the Board. The Board may provide for redemption of bonds prior to maturity on such notice and at such time or times and with such redemption provisions, including premiums, as the Board may determine.

"Bonds; Resolutions and Indentures Generally

"32. The Board may determine and enter into indentures or adopt resolutions providing for the principal amount, date or dates, maturities, interest rate, or rates, denominations, form, registration, transfer, interchange and other provisions of the bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. The resolution of the Board authorizing any bond or any indenture so authorized under which the bonds are issued may include all such covenants and other provisions not inconsistent with the provisions of this Title, other than any restriction on the regulatory powers vested in the Board by this Title, as the Board may deem necessary or desirable for the issue, payment, security, protection or marketing of the bonds, including without limitation covenants and other provisions as to the rates or amounts of fees, rents and other charges to be charged or made for use of the facilities; the use, pledge, custody, securing, application and disposition of such revenues, of the proceeds of the bonds, and of any other moneys or contracts of the Authority; the operation, maintenance, repair and reconstruction of the facilities and the amounts which may be expended therefor; the sale, lease or other disposition of the facilities; the insuring of the facilities and of the revenues derived therefrom; the construction or other acquisition of other facilities; the issuance of additional bonds or other indebtedness; the rights of the bondholders and of any trustee for the bondholders upon default by the Authority or otherwise; and the modification of the provisions of the indenture and of the bonds. Reference on the face of the bonds to such resolution or indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof and of this Title into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all of the provisions of the indenture and of this Title and is bound thereby.

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"Maximum Maturity

"33. No bond or its terms shall mature in more than fifty years from its own date and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

"Tax Exemption

"34. All bonds and all other evidences of debt issued by the Authority under the provisions of this Title and the interest thereon shall at all times be free and exempt from all taxation by or under authority of any signatory parties, except for transfer, inheritance and estate taxes.

"Interest

"35. Bonds shall bear interest at such rate or rates as may be determined by the Board, payable annually or semiannually.

"Place of Payment

"36. The Board may provide for the payment of the principal and interest of bonds at any place or places within or without the signatory states, and in any specified lawful coin or currency of the United States of America.

"Execution

"37. The Board may provide for the execution and authentication of bonds by the manual, lithographed or printed facsimile signature of members of the Board, and by additional authentication by a trustee or fiscal agent appointed by the Board; provided, however, that one of such signatures shall be manual. If any of the members whose signatures or countersignatures appear upon the bonds or coupons cease to be members before the delivery of the bonds or coupons, their signatures or countersignatures are nevertheless valid and of the same force and effect as if the members had remained in office until the delivery of the bonds and coupons.

"Holding Own Bonds

"38. The Board shall have power out of any funds available therefor to purchase its bonds and may hold, cancel or resell such bonds.

"Sale

"39. The Board may fix terms and conditions for the sale or other disposition of any authorized issue of bonds. The Board may sell bonds at less than their par or face value but no issue of bonds may be sold at an aggregate price below the par or face value thereof if such sale would result in a net interest cost to the Authority calculated upon the entire issue so sold in excess of the applicable rate determined by the Board, payable semiannually, computed with relation to the absolute maturity of the bonds according to standard tables of bond values, deducting the amount of any premium to be paid

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on the redemption of any bonds prior to maturity. All bonds issued and sold pursuant to this title may be sold in such manner, either at public or private sale, as the Board shall determine.

"Negotiability

"40. All bonds issued under the provisions of this Title are negotiable instruments.

"Bonds Eligible for Investment and Deposit

"41. Bonds issued under the provisions of this Title are hereby made securities in which all public officers and public agencies of the signatories and their political subdivisions and all banks, trust companies, savings and loan associations, investment companies and others carrying on a banking business, all insurance companies and insurance associations and others carrying on an insurance business, all administrators, executors, guardians, trustees and other fiduciaries, and all other persons may legally and properly invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any officer of any signatory, or of any agency or political subdivision of any signatory, for any purpose for which the deposit of bonds or other obligations of such signatory is now or may hereafter be authorized by law.

"Validation Proceedings

"42. Prior to the issuance of any bonds, the Board may institute a special proceeding to determine the legality of proceedings to issue the bonds and their validity under the laws of any of the signatory parties. Such proceeding shall be instituted and prosecuted in rem and the final judgment rendered therein shall be conclusive against all persons whomsoever and against each of the signatory parties.

"Recording

"43. No indenture need be recorded or filed in any public office, other than the office of the Board. The pledge of revenues provided in any idenure shall take effect forthwith as provided therein and irrespective of the date of receipt of such revenues by the Board of the indenture trustee. Such pledge shall be effective as provided in the indenture without physical delivery of the revenues to the Board of to the indenture trustee.

"Pledged Revenues

"44. Bond redemption and interest payments shall, to the extent provided in the resolution or indenture, constitute a first, direct and exclusive charge and lien on all revenues received from the use and operation of the facility, and on any sinking or other funds created therefrom. All such revenues, together with interest thereon, shall constitute a trust fund for the security and payment of such bonds and except as and to the extent provided in the indenture with respect to the payment therefrom of expenses for other purposes including

administration, operation, maintenance, improvements or extensions of the facilities or other purposes shall not be used or pledged for any other purpose so long as such bonds, or any of them, are outstanding and unpaid.

"Remedies

"45. The holder of any bond may for the equal benefit and protection of all holders of bonds similarly situated: (1) by mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the Board or assumed by it, its officers, agents or employees under the provisions of

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any indenture, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction or insurance of the facilities, or in connection with the collection, deposit, investment, application and disbursement of the revenues derived from the operation and use of the facilities, or in connection with the deposit, investment and disbursement of the proceeds received from the sale of bonds; or (2) by action or suit in a court of competent jurisdiction of any signatory party require the Authority to account as if it were the trustee of an express trust, or enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds.

"ARTICLE X

"EQUIPMENT TRUST CERTIFICATES

"Power

"46. The Board shall have power to execute agreements, leases and equipment trust certificates with respect to the purchase of facilities or equipment such as cars, trolley buses and motor buses, or other craft, in the form customarily used in such cases and appropriate to effect such purchase, and may dispose of such equipment trust certificates in such manner as it may determine to be for the best interests of the Authority. Each vehicle covered by an equipment trust certificate shall have the name of the owner or lessor plainly marked upon both sides thereof, followed by the words 'Owner and Lessor'.

"Payments

"47. All monies required to be paid by the Authority under the provisions of such agreements, leases and equipment trust certificates shall be payable solely from the revenue to be derived from the operation of the transit system or from such grants, loans, appropriations or other revenues, as may be available to the Board under the provisions of this Title. Payment for such facilities or equipment, or rentals thereof, may be made in installments, and the deferred installments may be evidenced by equipment trust certificates as aforesaid, and title to such facilities or equipment may not vest in the Authority until the equipment trust certificates are paid.

"Procedure

"48. The agreement to purchase facilities or equipment by the Board may direct the vendor to sell and assign the equipment to a bank or trust company, duly authorized to transact business in any of the signatory States, or to the Housing and Home Finance Administrator, as trustee, lessor or vendor, for the benefit and security of the equipment trust certificates and may direct the trustee to deliver the facilities and equipment to one or more designated officers of the Board and may authorize the trustee simultaneously therewith to execute and deliver a lease of the facilities or equipment to the Board.

"Agreements and Leases

"49. The agreements and leases shall be duly acknowledged before some person authorized by law to take acknowledgements of deeds and in the form required for acknowledgement of deeds and such agreements, leases, and equipment trust certificates shall be authorized by resolution of the Board and shall contain such covenants, conditions and provisions as may be deemed necessary or appropriate to insure the payment of the equipment trust certificates from the revenues to be derived from the operation of the transit system and other funds.

"The covenants, conditions and provisions of the agreements, leases and equipment trust certificates shall not conflict with any of the provisions of any resolution or trust agreement securing the payment of bonds or other obligations of the Authority then outstanding or conflict with or be in derogation of the rights of the holders of any such bonds or other obligations.

"Law Governing

"50. The equipment trust certificates issued hereunder shall be governed by Laws of the District of Columbia and for this purpose the chief place of business of the Authority shall be considered to be the District of Columbia. The filing of any documents required or permitted to be filed shall be governed by the Laws of the District of Columbia.

"ARTICLE XI

"OPERATION OF FACILITIES

"Operation by Contract or Lease

"51. Any facilities and properties owned or controlled by the Authority may be operated by the Authority directly or by others pursuant to contract or lease as the Board may determine.

"The Operating Contract

"52. Without limitation upon the right of the Board to prescribe such additional terms and provisions as it may deem necessary and appropriate, the operating contract shall;

"(a) specify the services and functions to be performed by the Contractor;

"(b) provide that the Contractor shall hire, supervise and control all personnel required to perform the services

and functions assumed by it under the operating contract and that all such personnel shall be employees of the Contractor and not of the Authority;

"(c) require the Contractor to assume the obligations of the labor contract or contracts of any transit company which may be acquired by the Authority and assume the pension obligations of any such transit company;

"(d) require the Contractor to comply in all respects with the labor policy set forth in Article XIV of this Title;

"(e) provide that no transfer of ownership of the capital stock, securities or interests in any Contractor, whose principal business is the operating contract, shall be made without written approval of the Board and the certificates or other instruments representing such stock, securities or interest shall contain a statement of this restriction;

"(f) provide that the Board shall have the sole authority to determine the rates or fares to be charged, the routes to be operated and the service to be furnished;

"(g) specify the obligations and liabilities which are to be assumed by the Contractor and those which are to be the responsibility of the Authority;

"(h) provide for an annual audit of the books and accounts of the Contractor by an independent certified public accountant to be selected by the Board and for such other audits, examinations and investigations of the books and records, procedures and affairs of the Contractor at such times and in such manner as the Board shall require, the cost of such audits, examinations and investigations to be borne as agreed by the parties in the operating contract; and

"(i) provide that no operating contract shall be entered into for a term in excess of five years; provided, that any such contract may be renewed for successive terms, each of which shall not exceed five years. Any such operating contract shall be subject to termination by the Board for cause only.

"Compensation for Contractor

"53. Compensation to the Contractor under the operating contract may, in the discretion of the Board, be in the form of (1) a fee paid by the Board to the Contractor for services, (2) a payment by the Contractor to the Board for the right to operate the system, or (3) such other arrangement as the Board may prescribe; provided, however, that the compensation shall bear a reasonable relationship to the benefits to the Authority and to the estimated costs the Authority would incur in directly performing the functions and duties delegated under the operating contract; and provided, further, that no such contract shall create any right in the Contractor (1) to make or change any rate or fare or alter or change the service specified in the contract to be provided or (2) to seek judicial relief by any form of original action, review or other proceedings from any rate or fare or service prescribed by the Board. Any assertion, or attempted assertion, by the Contractor of the right to make or change any rate or fare or service prescribed by the Board shall constitute cause for termination of the operating contract. The operating contract may provide incentives for efficient and economical management.

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"Selection of Contractor

"54. The Board shall enter into an operating contract only after formal advertisement and negotiations with all interested and qualified parties, including private transit companies rendering transit service within the Zone; provided, however, that, if the Authority acquires transit facilities from any agency of the federal or District of Columbia governments, in accordance with the provisions of Article VII, Section 20 of this Title, the Authority shall assume the obligations of any operating contract which the transferor agency may have entered into.

"ARTICLE XII

"COORDINATION OF PRIVATE AND PUBLIC FACILITIES

"Declaration of Policy

"55. It is hereby declared that the interest of the public in efficient and economical transit service and in the financial well-being of the Authority and of the private transit companies requires that the public and private segments of the regional transit system be operated, to the fullest extent possible, as a coordinated system without unnecessary duplicating service.

"Implementation of Policy

"56. In order to carry out the legislative policy set forth in Section 55 of this Article XII

"(a) The Authority—

"(1) except as herein provided, shall not, directly or through a Contractor, perform transit service by bus or similar motor vehicles;

"(2) shall, in cooperation with the private carriers and WMATC, coordinate to the fullest extent practicable, the schedules for service performed by its facilities with the schedules for service performed by private carriers; and

"(3) shall enter into agreements with the private carriers to establish and maintain, subject to approval by WMATC, through routes and joint fares and provide for the division thereof, or, in the absence of such agreements, establish and maintain through routes and joint fares in accordance with orders issued by WMATC directed to the private carriers when the terms and conditions for such through service and joint fares are acceptable to it.

"(b) The WMATC, upon application, complaint, or upon its own motion, shall—

"(1) direct private carriers to coordinate their schedules for service with the schedules for service performed by facilities owned or controlled by the Authority;

"(2) direct private carriers to improve or extend any existing services or provide additional service over additional routes;

"(3) authorize a private carrier, pursuant to agreement between said carrier and the Authority, to establish and maintain through routes and joint fares for transportation to be rendered with facilities owned or controlled by the Authority if, after hearing held upon reasonable notice, WMATC finds that such through

routes and joint fares are required by the public interest; and

"(4) in the absence of such an agreement with the Authority, direct a private carrier to establish and maintain through routes and joint fares with the Authority, if, after hearing held upon reasonable notice, WMATC finds that such through service and joint fares are required by the public interest; provided, however, that no such order, rule or regulation of WMATC shall be construed to require the Authority to establish and maintain any through route and joint fare.

"(c) WMATC shall not authorize or require a private carrier to render any service, including the establishment or continuation of a joint fare for a through route service with the Authority which is based on a division thereof between the Authority and private carrier which does not provide a reasonable return to the private carrier, unless the carrier is currently earning a reasonable return on its operation as a whole in performing transportation subject to the jurisdiction of WMATC. In determining the issue of reasonable return, WMATC shall take into account any income attributable to the carrier, or to any corporation, firm or association owned in whole or in part by the carrier, from the Authority whether by way of payment for services or otherwise.

"(d) If the WMATC is unable, through the exercise of its regulatory powers over the private carriers granted in paragraph (b) hereof or otherwise, to bring about the requisite coordination of operations and service between the private carriers and the Authority, the Authority may in the situations specified in paragraph (b) hereof, cause such transit service to be rendered by its Contractor by bus or other motor vehicle, as it shall deem necessary to effectuate the policy set forth in Section 55 hereof. In any such situation, the Authority, in order to encourage private carriers to render bus service to the fullest extent practicable, may, pursuant to agreement, make reasonable subsidy payments to any private carrier.

"(e) The Authority may acquire the capital stock or transit facilities of any private transit company and may perform transit service, including service by bus or similar motor vehicle, with transit facilities so acquired, or with transit facilities acquired pursuant to article VII, section 20. Upon acquisition of the capital stock or the transit facilities of any private transit company, the Authority shall undertake the acquisition as soon as possible of the capital stock or the transit facilities of each of the other private transit companies within the zone requesting such acquisition. Lack of such request, however, shall not be construed to preclude the Authority from acquiring the capital stock or the transit facilities of any such company pursuant to section 82 of article XVI.

"Rights of Private Carriers Unaffected

"57. Nothing in this Title shall restrict or limit such rights and remedies, if any, that any private carrier may have against the Authority arising out of acts done or

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actions taken by the Authority hereunder. In the event any court of competent jurisdiction shall determine that the Authority has unlawfully infringed any rights of any private carrier or otherwise caused or permitted any private carrier to suffer legally cognizable injury, damages or harm and shall award a judgment therefor, such judgment shall constitute a lien against any and all of the assets and properties of the Authority.

"Financial Assistance to Private Carriers

"58. (a) The Board may accept grants from and enter into loan agreements with the Housing and Home Finance Administrator, pursuant to the provisions of the Urban Mass Transportation Act of 1964 (78 Stat. 302), or with any successor agency or under any law of similar purport, for the purpose of rendering financial assistance to private carriers.

"(b) An application by the Board for any such grant or loan shall be based on and supported by a report from WMATC setting forth for each private carrier to be assisted (1) the equipment and facilities to be acquired, constructed, reconstructed, or improved, (2) the service proposed to be rendered by such equipment and facilities, (3) the improvement in service expected from such facilities and equipment, (4) how the use of such facilities and equipment will be coordinated with the transit facilities owned by the Authority, (5) the ability of the affected private carrier to repay any such loans or grants and (6) recommend terms for any such loans or grants.

"(c) Any equipment or facilities acquired, constructed, reconstructed or improved with the proceeds of such grants or loans shall be owned by the Authority and may be made available to private carriers only by lease or other agreement which contain provisions acceptable to the Housing and Home Finance Administrator assuring that the Authority will have satisfactory continuing control over the use of such facilities and equipment.

"ARTICLE XIII

"JURISDICTION; RATES AND SERVICE

"Washington Metropolitan Area Transit Commission

"59. Except as provided herein, this Title shall not affect the functions and jurisdiction of WMATC, as granted by Titles I and II of this Compact, over the transportation therein specified and the persons engaged therein and the Authority shall have no jurisdiction with respect thereto.

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"Public Facilities

"60. Service performed by transit facilities owned or controlled by the Authority, and the rates and fares to be charged for such service, shall be subject to the sole and exclusive jurisdiction of the Board and, notwithstanding any other provision in this Compact contained, WMATC shall have no authority with respect thereto, or with respect to any contractor in connection with the operation by it of transit facilities owned or controlled

by the Authority. The determinations of the Board with respect to such matters shall not be subject to judicial review nor to the processes of any court.

"Standards

"61. Insofar as practicable, and consistent with the provision of adequate service at reasonable fares, the rates and fares and service shall be fixed by the Board so as to result in revenues which will:

"(a) pay the operating expenses and provide for repairs, maintenance and depreciation of the transit system owned or controlled by the Authority;

"(b) provide for payment of all principal and interest on outstanding revenue bonds and other obligations and for payment of all amounts to sinking funds and other funds as may be required by the terms of any indenture or loan agreement;

"(c) provide for the purchase, lease or acquisition of rolling stock, including provisions for interest, sinking funds, reserve funds, or other funds required for payment of any obligations incurred by the Authority for the acquisition of rolling stock; and

"(d) provide funds for any purpose the Board deems necessary and desirable to carry out the purposes of this Title.

"Hearings

"62. (a) The Board shall not make or change any fare or rate, nor establish or abandon any service except after holding a public hearing with respect thereto.

"(b) Any signatory, any political subdivision thereof, any agency of the federal government and any person, firm or association served by or using the transit facilities of the Authority and any private carrier may file a request with the Board for a hearing with respect to any rates or charges made by the Board or any service rendered with the facilities owned or controlled by the Authority. Such request shall be in writing, shall state the matter on which a hearing is requested and shall set forth clearly the matters and things on which the request relies. As promptly as possible after such a request is filed, the Board, or such officer or employee as it may designate, shall confer with the protestant with respect to the matters complained of. After such conference, the Board, if it deems the matter meritorious and of general significance, may call a hearing with respect to such request.

"(c) The Board shall give at least thirty days' notice for all hearings. The notice shall be given by publication in a newspaper of daily circulation throughout the Zone and such notice shall be published once a week for two successive weeks. The notice shall start with the day of first publication. In addition, the Board shall post notices of the hearing in its offices, all stations and terminals, and in all of its vehicles and rolling stock in revenue service.

"(d) Prior to calling a hearing on any matter specified in this section, the Board shall prepare and file at its main office and keep open for public inspection its report relating to the proposed action to be considered at such hearing. Upon receipt by the Board of any report sub-

mitted by WMATC, in connection with a matter set for hearing, pursuant to the provisions of Section 63 of this Article XIII, the Board shall file such report at its main office and make it available for public inspection. For hearings called by the Board pursuant to paragraph (b), above, the Board also shall cause to be lodged and kept open for public inspection the written request upon which the hearing is granted and all documents filed in support thereof.

"Reference of Matters to WMATC

"63. To facilitate the attainment of the public policy objectives for operation of the publicly and privately owned or controlled transit facilities as stated in Article XII, Section 55, prior to the hearing provided for by Section 62 hereof—

"(a) The Board shall refer to WMATC for its consideration and recommendations, any matter which the Board considers may affect the operation of the publicly and privately owned or controlled transit facilities as a coordinated regional transit system and any matter for which the Board has called a hearing, pursuant to Section 62 of this Article XIII, except that temporary or emergency changes in matters affecting sevice shall not be referred; and

"(b) WMATC, upon such reference of any matter to it, shall give the referred matter preference over any other matters pending before it and shall, as expeditiously as practicable, prepare and transmit its report thereon to the Board. The Board may request WMATC to reconsider any part of its report or to make any supplemental reports it deems necessary. All of such reports shall be advisory only.

"(c) Any report submitted by WMATC to the Board shall consider, without limitation, the probable effect of the matter or proposal upon the operation of the publicly and privately owned or controlled transit facilities as a coordinated regional system, passenger movements, fare structures, service and the impact on the revenues of both the public and private facilities.

"ARTICE XIV

"LABOR POLICY

"Construction

"64. The Board shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating, of projects, buildings and works which are undertaken by the Authority or are financially assisted by it, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), and every such employee shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight

hours in any workday or forty hours in any workweek, as the case may be. A provision stating the minimum wages thus determined and the requirement that overtime be paid as above provided shall be set out in each project advertisement for bids and in each bid proposal form and shall be made a part of the contract covering the project, which contract shall be deemed to be a contract of the character specified in Section 103 of the Contract Work Hours Standards Act (76 Stat. 357), as now or as may hereafter be in effect. The Secretary of Labor shall have, with respect to the administration and enforcement of the labor standards specified in this provision, the supervisory, investigatory and other authority and functions set forth in Reorganization Plan No. 14 of 1950 (15 F.R. 3176, 64 Stat. 1267, 5 U.S.C. 133z–15), and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276(c)). The requirements of this section shall also be applicable with respect to the employment of laborers and mechanics in the construction, alteration or repair, including painting and decorating, of the transit facilities owned or controlled by the Authority where such activities are performed by a Contractor pursuant to agreement with the operator of such facilities.

"Equipment and Supplies

"65. Contracts for the manufacture or furnishing of materials, supplies, articles and equipment shall be subject to the provisions of the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.), as now or as may hereafter be in effect.

"Operations

"66. (a) The rights, benefits, and other employee protective conditions and remedies of section 13(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1609(c)), as determined by the Secretary of Labor shall apply to the operation by the Washington Metropolitan Area Transit Authority of any mass transit facilities owned or controlled by it and to any contract or other
Page 128 arrangement for the operation of transit facilities. Whenever the Authority shall operate any transit facility or enter into any contractual or other arrangements for the operation of such transit facility the Authority shall extend to employees of affected mass transportation systems first opportunity for transfer and appointment as employees of the Authority in accordance with seniority, in any nonsupervisory job in respect to such operations for which they can qualify after a reasonable training period. Such employment shall not result in any worsening of the employee's position in his former employment nor any loss of wages, hours, working conditions, seniority, fringe benefits and rights and privileges pertaining thereto.

"(b) The Authority shall deal with and enter into written contracts with employees as defined in section 152 of title 29, United States Code, through accredited representatives of such employees or representatives of any labor organization authorized to act for such employees concerning wages, salaries, hours, working conditions, and pension or retirement provisions.

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"(c) In case of any labor dispute involving the Authority and such employees where collective bargaining does not result in agreement, the Authority shall submit such dispute to arbitration by a board composed of three persons, one appointed by the Authority, one appointed by the labor organization representing the employees, and a third member to be agreed upon by the labor organization and the Authority. The member agreed upon by the labor organization and the Authority shall act as chairman of the board. The determination of the majority of the board of arbitration, thus established shall be final and binding on all matters in dispute. If after a period of ten days from the date of the appointment of the two arbitrators representing the Authority and the labor organization, the third arbitrator has not been selected, then either arbitrator may request the Federal Mediation and Conciliation Service to furnish a list of five persons from which the third arbitrator shall be selected. The arbitrators appointed by the Authority and the labor organization, promptly after the receipt of such list shall determine by lot the order of elimination, and thereafter each shall in that order alternately eliminate one name until only one name remains. The remaining person on the list shall be the third arbitrator. The term 'labor dispute' shall be broadly construed and shall include any controversy concerning wages, salaries, hours, working conditions, or benefits including health and welfare, sick leave, insurance or pension or retirement provisions but not limited thereto, and including any controversy concerning any differences or questions that may arise between the parties including but not limited to the making or maintaining of collective bargaining agreements, the terms to be included in such agreements, and the interpretation or application of such collective bargaining agreements and any grievance that may arise and questions concerning representation. Each party shall pay one-half of the expenses of such arbitration.

"(d) The Authority is hereby authorized and empowered to establish and maintain a system of pensions and retirement benefits for such officers and employees of the Authority as may be designated or described by resolution of the Authority; to fix the terms of and restrictions on admission to such system and the classifications therein; to provide that persons eligible for admission in such pension system shall not be eligible for admission to, or receive any benefits from, any other pension system (except social security benefits), which is financed or funded, in whole or in part, directly or indirectly by funds paid or appropriated by the Authority to such other pension system, and to provide in connection with such pension system, a system of benefits payable to the beneficiaries and dependents of any participant in such pension system after the death of such participant (whether accidental or otherwise, whether occurring in the actual performance of duty or otherwise, or both) subject to such exceptions, conditions, restrictions and classifications as may be provided by resolution of the Authority. Such pension system shall be financed or funded by such means and in such

manner as may be determined by the Authority to be economically feasible. Unless the Authority shall otherwise determine, no officer or employee of the Authority and no beneficiary or dependent of any such officer or employee shall be eligible to receive any pension or retirement or other benefits both from or under any such pension system and from or under any pension or retirement system established by an acquired transportation system or established or provided for, by or under the provisions of any collective bargaining agreement between the Authority and the representatives of its employees.

"(e) Whenever the Authority acquires existing transit facilities from a public or privately owned utility either in proceeding by eminent domain or otherwise, the Authority shall assume and observe all existing labor contracts and pension obligations. When the Authority acquires an existing transportation system, all employees who are necessary for the operation thereof by the Authority shall be transferred to and appointed as employees of the Authority, subject to all the rights and benefits of this title. These employees shall be given seniority credit and sick leave, vacation, insurance and pension credits in accordance with the records or labor agreements from the acquired transportation system. Members and beneficiaries of any pension or retirement system or other benefits established by the acquired transportation system shall continue to have rights, privileges, benefits, obligations and status with respect to such established system. The Authority shall assume the obligations of any transportation system acquired by it with regard to wages, salaries, hours, working conditions, sick leave, health and welfare and pension or retirement provisions for employees. It shall assume the provisions of any collective bargaining agreement between such acquired transportation system and the representatives of its employees. The Authority and the employees, through their representatives for collective bargaining purposes, shall take whatever action may be necessary to have pension trust funds presently under the joint control of the acquired transportation system and the participating employees through their representative transferred to the trust fund to be established, maintained and administered jointly by the Authority and the participating employees through their representatives. No employee of any acquired transportation system who is transferred to a position with the Authority shall by reason of such transfer be placed in any worse position with respect to workmen's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance or any other benefits, than he enjoyed as an employee of such acquired transportation system.

"ARTICLE XV

"RELOCATION ASSISTANCE

"Relocation Program and Payments

"67. Section 7 of the Urban Mass Transportation Act of 1964, and as the same may from time to time be amended, and all regulations promulgated thereunder, are hereby made applicable to individuals, families, busi-

ness concerns and nonprofit organizations displaced from real property by actions of the Authority without regard to whether financial assistance is sought by or extended to the Authority under any provision of that Act; provided, however, that in the event real property is acquired for the Authority by an agency of the federal government, or by a State or local agency or instrumentality, the Authority is authorized to reimburse the acquiring agency for relocation payments made by it.

"Relocation of Public or Public Utility Facilities

"68. Notwithstanding the provisions of Section 67 of this article XV, any highway or other public facility or any facilities of a public utility company which will be dislocated by reason of a project deemed necessary by the Board to effectuate the authorized purposes of this Title shall be relocated if such facilities are devoted to a public use, and the reasonable cost of relocation, if substitute facilities are necessary, shall be paid by the Board from any of its monies.

"ARTICLE XVI

"GENERAL PROVISIONS

"Creation and Administration of Funds

"69. (a) The Board may provide for the creation and administration of such funds as may be required. The funds shall be disbursed in accordance with rules established by the Board and all payments from any funds shall be reported to the Board. Monies in such funds and other monies of the Authority shall be deposited, as directed by the Board, in any state or national bank located in the Zone having a total paid-in capital of at least one million dollars ($1,000,000). The trust department of any such state or national bank may be designated as a depositary to receive any securities acquired or owned by the Authority. The restriction with respect to paid-in capital may be waived for any such bank which agrees to pledge federal securities to protect the funds and securities of the Authority in such amounts an pursuant to such arrangements as may be acceptable to the Board.

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"(b) Any monies of the Authority may, in the discretion of the Board and subject to any agreement or covenant between the Authority and the holders of any of its obligations limiting or restricting classes of investments, be invested in bonds or other obligations of, or guaranteed as to interest and principal by, the United States, Maryland, Virginia or the political subdivisions or agencies thereof.

"Annual Independent Audit

"70. (a) As soon as practical after the closing of the fiscal year, an audit shall be made of the financial accounts of the Authority. The audit shall be made by qualified certified public accountants selected by the Board, who shall have no personal interest direct or indirect in the financial affairs of the Authority or any of its officers or employees. The report of audit shall be

prepared in accordance with generally accepted auditing principles and shall be filed with the Chairman and other officers as the Board shall direct. Copies of the report shall be distributed to each Director, to the Congress, to the Board of Commissioners of the District of Columbia, to the Governors of Virginia and Maryland, to the Washington Suburban Transit Commission, to the Northern Virginia Transportation Commission and to the governing bodies of the political subdivisions located within the Zone which are parties to commitments for participation in the financing of the Authority and shall be made available for public distribution.

"(b) The financial transactions of the Board shall be subject to audit by the United States General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the Board are kept.

"(c) Any Director, officer or employee who shall refuse to give all required assistance and information to the accountants selected by the Board or who shall refuse to submit to them for examination such books, documents, records, files, accounts, papers, things or property as may be requested shall, in the discretion of the Board forfeit his office.

"Reports

"71. The Board shall make and publish an annual report on its programs, operations and finances, which shall be distributed in the same manner provided by Section 70 of this Article XVI for the report of annual audit. It may also prepare, publish and distribute such other public reports and informational materials as it may deem necessary or desirable.

"Insurance

"72. The Board may self-insure or purchase insurance and pay the premiums therefore against loss or damage to any of its properties; against liability for injury to persons or property; and against loss of revenue from any cause whatsoever. Such insurance coverage shall be in such form and amount as the Board may determine, subject to the requirements of any agreement arising out of issuance of bonds or other obligations by the Authority.

"Purchasing

"73. Contracts for the construction, reconstruction or improvement of any facility when the expenditure required exceeds ten thousand dollars ($10,000) and contracts for the purchase of supplies, equipment and materials when the expenditure required exceeds two thousand five hundred dollars ($2,500) shall be advertised and let upon sealed bids to the lowest responsible bidder. Notice requesting such bids shall be published in a manner reasonably likely to attract prospective bidders, which publication shall be made at least ten days before bids are received and in at least two newspapers of general circulation in the Zone. The Board may reject any and all bids and readvertise in its discretion. If after rejecting bids

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the Board determines and resolves that, in its opinion, the supplies, equipment and materials may be purchased at a lower price in the open market, the Board may give each responsible bidder an opportunity to negotiate a price and may proceed to purchase the supplies, equipment and materials in the open market at a negotiated price which is lower than the lowest rejected bid of a responsible bidder, without further observance of the provisions requiring bids or notice. The Board shall adopt rules and regulations to provide for purchasing from the lowest responsible bidder when sealed bids, notice and publication are not required by this section. The Board may suspend and waive the provisions of this section requiring competitive bids whenever:

"(a) the purchase is to be made from or the contract is to be made with the federal or any State government or any agency or political subdivision thereof or pursuant to any open end bulk purchase contract of any of them;

"(b) the public exigency requires the immediate delivery of the articles;

"(c) only one source of supply is available; or

"(d) the equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest.

"Rights of Way

"74. The Board is authorized to locate, construct and maintain any of its transit and related facilities in, upon, over, under or across any streets, highways, freeways, bridges and any other vehicular facilities, subject to the applicable laws governing such use of such facilities by public agencies. In the absence of such laws, such use of such facilities by the Board shall be subject to such reasonable conditions as the highway department or other affected agency of a signatory party may require; provided, however, that the Board shall not construct or operate transit or related facilities upon, over, or across any parkways or park lands without the consent of, and except upon the terms and conditions required by, the agency having jurisdiction with respect to such parkways and park lands, but may construct or operate such facilities in a subway under such parkways or park lands upon such reasonable terms and conditions as may be specified by the agency having jurisdiction with respect thereto.

"Compliance with Laws, Regulations and Ordinances

"75. The Board shall comply with all laws, ordinances and regulations of the signatories and political subdivisions and agencies thereof with respect to use of streets, highways and all other vehicular facilities, traffic control and regulation, zoning, signs and buildings.

"Police

"76. The Board is authorized to employ watchmen, guards and investigators as it may deem necessary for the protection of its properties, personnel and passengers and such employees, when authorized by any jurisdiction within the Zone, may serve as special police officers in any such jurisdiction. Nothing contained herein shall relieve

any signatory or political subdivision or agency thereof from its duty to provide police service and protection or to limit, restrict or interfere with the jurisdiction of or performance of duties by the existing police and law of enforcement agencies.

"Exemption from Regulation

"77. Except as otherwise provided in this Title, any transit service rendered by transit facilities owned or controlled by the Authority and the Authority or any corporation, firm or association performing such transit service pursuant to an operating contract with the Authority, shall, in connection with the performance of such service, be exempt from all laws, rules, regulations and orders of the signatories and of the United States otherwise applicable to such transit service and persons, except that laws, rules, regulations and orders relating to inspection of equipment and facilities, safety and testing shall remain in force and effect; provided, however, that the Board may promulgate regulations for the safety of the public and employees not inconsistent with the applicable laws, rules, regulations or orders of the signatories and of the United States.

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"Tax Exemption

"78. It is hereby declared that the creation of the Authority and the carrying out of the corporate purposes of the Authority is in all respects for the benefit of the people of the signatory states and is for a public purpose and that the Authority and the Board will be performing an essential governmental function, including, without limitation, proprietary, governmental and other functions, in the exercise of the powers conferred by this Title. Accordingly, the Authority and the Board shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision or upon its activities in the operation and maintenance of any transit facilities or upon any revenues therefrom and the property and income derived therefrom shall be exempt from all federal, State, District of Columbia, municipal and local taxation. This exemption shall include, without limitation, all motor vehicle license fees, sales taxes and motor fuel taxes.

"Reduced Fares

"79. The District of Columbia, the Northern Virginia Transportation District, the Washington Suburban Transit District and the component governments thereof, may enter into contracts or agreements with the Authority to make equitable payments for fares lower than those established by the Authority pursuant to the provisions of article XIII hereof for any specified class or category of riders.

"Liability for Contracts and Torts

"80. The Authority shall be liable for its contracts and for its torts and those of its Directors, officers, employees and agent committed in the conduct of any proprietary function, in accordance with the law of the applicable

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signatory (including rules on conflict of laws), but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for such breach of contracts and torts for which the Authority shall be liable, as herein provided, shall be by suit against the Authority. Nothing contained in this Title shall be construed as a waiver by the District of Columbia, Maryland, Virginia and the counties and cities within the Zone of any immunity from suit.

"Jurisdiction of Courts

"81. The United States District Courts shall have original jurisdiction, concurrent with the Courts of Maryland and Virginia, of all actions brought by or against the Authority and to enforce subpoenas issued under this Title. Any such action initiated in a State Court shall be removable to the appropriate United States District Court in the manner provided by Act of June 25, 1948, as amended (28 U.S.C. 1446).

"Condemnation

"82. (a) The Authority shall have the power to acquire by condemnation, whenever in its opinion it is necessary or advantageous to the Authority to do so, any real or personal property, or any interest therein, necessary or useful for the transit system authorized herein, except property owned by the United States, by a signatory, or any political subdivision thereof, whenever such property cannot be acquired by negotiated purchase at a price satisfactory to the Authority.

"(b) Proceedings for the condemnation of property in the District of Columbia shall be instituted and maintained under the Act of December 23, 1963 (77 Stat. 577–581, D.C. Code 1961, Supp. IV, Sections 1351–1368). Proceedings for the condemnation of property located elsewhere within the Zone shall be instituted and maintained, if applicable, pursuant to the provisions of the Act of August 1, 1888, as amended (25 Stat. 357, 40 U.S.C. 257) and the Act of June 25, 1948 (62 Stat. 935 and 937, 28 U.S.C. 1358 and 1403) or any other applicable Act: provided, however, that if there is no applicable Federal law, condemnation proceedings shall be in accordance with the provisions of the State law of the signatory in which the property is located governing condemnation by the highway agency of such state. Whenever the words 'real property,' 'realty,' 'land,' 'easement,' 'right-of-way,' or words of similar meaning are used in any applicable federal or state law relating to procedure, jurisdiction and venue, they shall be deemed, for the purposes of this Title, to include any personal property authorized to be acquired hereunder.

"(c) Any award or compensation for the taking of property pursuant to this Title shall be paid by the Authority, and none of the signatory parties nor any other agency, instrumentality or political subdivision thereof shall be liable for such award or compensation.

"Enlargement and Withdrawal; Duration

"83. (a) When advised in writing by the Northern Virginia Transportation Commission or the Washington

Suburban Transit Commission that the geographical area embraced therein has been enlarged, the Board, upon such terms and conditions as it may deem appropriate, shall by resolution enlarge the Zone to embrace the additional area.

"(b) The duration of this Title shall be perpetual but any signatory thereto may withdraw therefrom upon two years' written notice to the Board.

"(c) The withdrawal of any signatory shall not relieve such signatory, any transportation district, county or city or other political subdivision thereof from any obligation to the Authority, or inuring to the benefit of the Authority, created by contract or otherwise.

"Amendments and Supplements

"84. Amendments and supplements to this Title to implement the purposes thereof may be adopted by legislative action of any of the signatory parties concurred in by all of the others.

"Construction and Severability

"85. The provisions of this Title and of the agreements thereunder shall be severable and if any phrase, clause, sentence or provision of this Title or any such agreement is declared to be unconstitutional or the applicability thereof to any signatory party, political subdivision or agency thereof is held invalid, the constitutionality of the remainder of this Title or any such agreement and the applicability thereof to any other signatory party, political subdivision or agency thereof or circumstance shall not be affected thereby. It is the legislative intent that the provisions of this Title be reasonably and liberally construed.

"Effective Date; Execution

"86. This Title shall be adopted by the signatories in the manner provided by law therefor and shall be signed and sealed in four duplicate original copies. One such copy shall be filed with the Secretary of State of each of the signatory parties or in accordance with laws of the State in which the filing is made, and one copy shall be filed and retained in the archives of the Authority upon its organization. This Title shall become effective ninety days after the enactment of concurring legislation by or on behalf of the District of Columbia, Maryland and Virginia and consent thereto by the Congress and all other acts or actions have been taken, including the signing and execution of the Title by the Governors of Maryland and Virginia and the Commissioners of the District of Columbia."

EXECUTION OF COMPACT

According to information received, the Compact set out in note above was signed as follows: By the Governor of Maryland, November 17, 1966; by the Governor of Virginia, November 21, 1966, and by the President of the Board of Commissioners of the District of Columbia, November 22, 1966.

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POLICY OF CONGRESS

Section 805 of Act Dec. 15, 1971, Pub. L. 92–196, 85 Stat. 659, provided: In granting its consent to the Washington Metropolitan Area Transit Authority Compact and enacting that compact for the District of Columbia, Congress declared the policy that, to the extent that costs of the regional transit project are not covered by user charges, such cost shall be equitably shared among the Federal, District of Columbia, and participating local governments in the transit zone. In the National Capital Transportation Act of 1969 (§ 1–1441 et seq.), Congress, in conformance with this policy, authorized the Commissioner of the District of Columbia to contract with the Transit Authority to make annual capital contributions to provide the District of Columbia's share of the cost of the regional transit project. Pursuant to this authorization, the District of Columbia has entered into a Capital Contributions Agreement with the Transit Authority and the political subdivisions in the transit zone to make the agreed upon annual contributions. It is the purpose of this section to reaffirm the aforementioned policy established by Congress with respect to the regional transit project and the contractual obligation of the District of Columbia to provide its share of the cost of the regional transit project.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. No. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(425) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, with respect to appointing two directors as specified in section 5(a) of the compact set out as a note to this section (the appointments to be made from a group of individuals, as specified in par. 425 of the Plan) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

CROSS REFERENCES

Blind and physically disabled persons, equal access to public conveyances, see § 6–1502.

Relocation payments and assistance to persons displaced by programs and projects of Washington Metropolitan Area Transit Authority, see § 5–732a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1–1431a, 1–1431b.

* * *

Page 130 to challenge plan arises from their long-accepted standing as taxpayers, the authority being an agency of the District of Columbia government supported in part by district tax revenues. *Id.*

Taxpayers of District of Columbia do not have standing to challenge bond referenda in Maryland or Virginia. *Id.*

§ 1-1431a. Consent of Congress to compact amendments.

(a) The Congress hereby consents to amendments to articles I, III, VII, IX, XI, XIV, and XVI of title III of the Washington Metropolitan Area Transit Regulation Compact substantially as set out in the note below section 1-1431.

(b) The Commissioner of the District of Columbia is authorized and directed to enter into and execute on behalf of the District of Columbia amendments, substantially as set forth in subsection (a), to title III of the Washington Metropolitan Area Transit Regulation Compact with the States of Virginia and Maryland. (July 13, 1972, Pub. L. 92-349, title III, § 301, 86 Stat. 466.)

CODIFICATION

In subsec. (a), the words "substantially as set out in the note below section 1-1431" have been substituted for "(D.C. Code, sec. 1-1431 note) substantially as follows:".

REFERENCE IN TEXT

The cited amendments are to the following sections within the articles of the Compact: 1(g), 5(a), 21, 35, 39, 51, 66, and 79.

§ 1-1431b. Consent of Congress to compact amendments—Acquisition of mass transit bus systems.

(a) The Congress hereby consents to amendments to articles XII and XVI of title III of the Washington Metropolitan Area Transit Regulation Compact substantially as set out in the note below section 1-1431.

(b) The Commissioner of the District of Columbia is authorized and directed to enter into and execute on behalf of the District of Columbia amendments, substantially as set forth above, to title III of the Washington Metropolitan Area Transit Regulation Compact with the States of Virginia and Maryland. (Oct. 21, 1972, Pub. L. 92-517, title I, § 101, 86 Stat. 1000.)

CODIFICATION

In subsec. (a), the words "substantially as set out in the note below section 1-1431" have been substituted for "(D.C. Code, sec. 1-1431 note) substantially as follows:".

REFERENCE IN TEXT

The cited amendments are to sections 56(e) and 82(a) of the Compact.

§ 1–1432. Authority and duty of Commissioner to execute and carry out compact.

The Commissioner of the District of Columbia is authorized and directed to enter into and execute an amendment to the Compact substantially as set forth above with the States of Virginia and Maryland and is further authorized and directed to carry out and effectuate the terms and provisions of said Title III, and there are hereby authorized to be appropriated out of District of Columbia funds such amounts as are necessary to carry out the obligations of the District of Columbia in accordance with the terms of the said Title III. (Nov. 6, 1966, 80 Stat. 1352, Pub. L. 89–774, § 2.)

REFERENCES IN TEXT

Words "amendment to the Compact substantially as set forth above" and "Title III", as used in this section, refer to the Washington Metropolitan Area Transit Authority Compact, set out as a note under § 1–1431.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–1433. Transfer of function, property, documents, etc.—Appropriations—Development of Plans—Advisory services.

(a) To assure uninterrupted progress in the development of the facilities authorized by the National Capital Transportation Act of 1965, the transfer of the functions and duties of the National Capital Transportation Agency (herein referred to as the Agency) to the Washington Metropolitan Area Transit Authority (herein referred to as the Authority) as required by section 1–1408(b) shall take place on September 30, 1967.

(b) Upon the effective date of the transfer of functions and duties authorized by subsection (a) of this section, the President is authorized to transfer to the Authority such real and personal property, studies, reports, records, and other assets and liabilities as are appropriate in order that the Authority may assume the functions and duties of the Agency and, further, the President shall make pro-

vision for the transfer to the Authority of the unexpended balance of the appropriations, and of other funds, of the Agency for use by the Authority but such unexpended balances so transferred shall be used only for the purpose for which such appropriations were originally made. Subsequent to said effective date, there is authorized to be appropriated to the Department of Housing and Urban Development, for payment to the Authority, any unappropriated portion of the authorization specified in section 1–1424(a)(1). There is also authorized to be appropriated to the District of Columbia out of the general fund of the District of Columbia, for payment to the Authority, any unappropriated portion of the authorization specified in section 1–1424(a)(2). Any such appropriations shall be used only for the purposes for which such authorizations were originally made.

(c) Pending the assumption by the Authority of the functions and duties of the Agency, the Agency is authorized and directed, in the manner herein set forth, fully to cooperate with and assist the Authority, the Northern Virginia Transportation Commission and the Washington Suburban Transit Commission in the development of plans for the extensions, new lines and related facilities required to expand the basic system authorized by the National Capital Transportation Act of 1965 into a regional system, but pending such transfer of functions and duties, nothing in this subchapter shall be construed to impair the performance by the Agency of the functions and duties imposed by the National Capital Transportation Act of 1965.

(d) In order to provide the cooperation and assistance specified in subsection (c) of this section, the Agency is authorized to perform, on a reimbursable basis, planning, engineering and such other

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services for the Authority, as the Authority may request, or to obtain such services by contract, but all such assistance and services shall be rendered in accordance with policy determinations made by the Authority and shall be advisory only.

(e) Amounts received by the Agency from the Authority as provided in subsection (d) of this section shall be available for expenditure by the Agency in performing services for the Authority. (Nov. 6, 1966, 80 Stat. 1352, Pub. L. 89–774, § 3.)

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REFERENCES IN TEXT

The National Capital Transportation Act of 1965, referred to in subsecs. (a) and (c), is classified to § 1-1421 et seq.

CODIFICATION

Section was also classified to 40 U.S.C. 672.

TRANSFER OF FUNCTIONS

Section 1(a)(3) of Reorg. Plan No. 2, of 1968, eff. June 30, 1968, transferred the functions of the Department of Housing and Urban Development, under subsection (b) of this section, to the Secretary of Transportation. For complete details of the Plan, see appendix to this title.

PRESIDENTIAL EXECUTIVE ORDER 11373

PROVIDING FOR CERTAIN TRANSFERS FROM THE NATIONAL CAPITAL TRANSPORTATION AGENCY TO THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Ex. Ord. No. 11373, Sept. 20, 1967, 32 F.R. 11371, provided:

By virtue of the authority vested in me by section 3(b) of the Act of November 6, 1966 (P.L. 89-774; 80 Stat. 1352; 40 U.S.C. 672(b)) [subsec. b of this section] and by section 301 of title 3 of the United States Code, it is ordered as follows:

SECTION 1. (a) There are hereby transferred to the Washington Metropolitan Area Transit Authority, effective on September 30, 1967, (i) all real and personal property, studies, and reports of the National Capital Transportation Agency, (ii) the records of that Agency, except records relating to individual employees or officers, and (iii) so much of the other assets, and so much of the liabilities, of that Agency as the Director of the Bureau of the Budget shall determine.

(b) Such measures and dispositions as may be necessary to effectuate the transfers provided for in subsection (a) of this section shall be carried out by the Director of the Bureau of the Budget or by such officers and agencies of the Executive Branch of the Government as he may designate therefor under the authority of this subsection.

SEC. 2. The authority conferred upon the President by the provisions of the above-mentioned section 3(b) to make provision for the transfer to the Washington Metropolitan Area Transit Authority of the unexpended balance of the appropriations, and of other funds, of the National Capital Transportation Agency is hereby delegated to the Director of the Bureau of the Budget.

§ 1-1434. Jurisdiction of courts—Removal of actions.

The United States District Courts shall have original jurisdiction, concurrent with the Courts of Maryland and Virginia, of all actions brought by or against the Authority and to enforce subpoenas issued pursuant to the provisions of Title III. Any such action initiated in a State court shall be re-

movable to the appropriate United States District Court in the manner provided by section 1446 of title 28, U.S. Code. (Nov. 6, 1966, 80 Stat. 1353, Pub. L. 89-774, § 4.)

REFERENCES IN TEXT

"Title III", as used in this section, refers to the Washington Metropolitan Area Transit Authority Compact, which is set out as a note under § 1-1431.

§ 1-1435. Amendment of laws and reorganization plans.

(a) All laws or parts of laws of the United States and of the District of Columbia inconsistent with the provisions of Title III are hereby amended for the purpose of this subchapter to the extent necessary to eliminate such inconsistencies and to carry out the provisions of this subchapter and Title III and all laws or parts of laws and all reorganization plans of the United States are hereby amended and made applicable for the purpose of this subchapter to the extent necessary to carry out the provisions of this subchapter and Title III. (Nov. 6, 1966, 80 Stat. 1353, Pub. L. 89-774, § 5(a).)

REFERENCES IN TEXT

"Title III", as used in this section, refers to the Washington Metropolitan Area Transit Authority Compact, which is set out as a note under § 1-1431.

§ 1-1436. Reservation of right to alter, amend or repeal—Submission of reports to Congress—Disclosure of information—Access to books and records—Audits.

(a) The right to alter, amend or repeal this subchapter is hereby expressly reserved.

(b) The Authority shall submit to Congress and the President copies of all annual and special reports made to the Governors, the Commissioner of the District of Columbia and/or the legislatures of the compacting States.

(c) The President and the Congress or any committee thereof shall have the right to require the disclosure and furnishing of such information by the Authority as they may deem appropriate. Further, the President and Congress or any of its committees shall have access to all books, records and papers of the Authority as well as the right of inspection of any facility used, owned, leased, regulated or under the control of said Authority.

(d) In carrying out the audits provided for in section 70(b) of the Compact the representatives of

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the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Board and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, agents, and custodians. (Nov. 6, 1966, 80 Stat. 1353, Pub. L. 89-774, § 6.)

REFERENCES IN TEXT

The Compact, referred to in subsec. (d) of this section, is the Washington Metropolitan Area Transit Authority Compact, which, along with § 70(b) thereof, also referred to in this section, is set out as a note under § 1-1431.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

APPENDIX B

RECEIVED APR 1975

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 73-2089

September Term, 19 74

Civil Action 2426-71

Eugene R. Brown, et al.

v.

D.C. Transit System, Inc., et al.,
Appellants

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 2 1975

HUGH E. KLINE
CLERK

ORDER

Appellees' suggestion for rehearing en banc having been transmitted to the full Court and no Judge having requested a vote thereon, it is

ORDERED by the Court en banc that appellees' aforesaid suggestion for rehearing en banc is denied.

For the Court:

HUGH E. KLINE
Clerk

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 73-2089 September Term, 19 74
Civil Action 2426-71

Eugene R. Brown, et al.

v.

D. C. Transit System, Inc., et al.,
Appellants

United States Court of Appeals
for the District of Columbia Circuit
FILED
APR 2 1975
HUGH E. KLINE
CLERK

Before: Danaher, Senior Circuit Judge; Leventhal and Wilkey, Circuit Judges.

O R D E R

On consideration of appellees' petition for rehearing, it is

ORDERED by the Court that appellees' aforesaid petition is denied.

Per Curiam

For the Court:

HUGH E. KLINE
Clerk

RECEIVED MAR - 3 1975

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S. App. D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 73-2089

EUGENE R. BROWN, ET AL, APPELLEES

v.

D.C. TRANSIT SYSTEM, INC., ET AL, APPELLANTS

Appeal from the United States District Court
for the District of Columbia

(D.C. Civil Action 2426-71)

Decided February 28, 1975

Harold Smith for appellant, D.C. Transit System, Inc.

Peter G. Ciano for appellant, Washington Metropolitan Area Transit Authority.

John H. Harmon, for appellees.

Before: DANAHER, *Senior Circuit Judge*, LEVENTHAL and WILKEY, *Circuit Judges*.

Opinion for the Court filed by *Senior Circuit Judge* DANAHER.

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DANAHER, *Senior Circuit Judge*: The above-named appellees (hereinafter, "Plaintiffs") were bus drivers in the employ of D.C. Transit System, Inc. (hereinafter, "Transit") whose services were terminated, as the district judge found, "because of failure to conform [1] their facial hair to the styling required by D.C. Transit Regulation #70-67." [2] He concluded after consideration of cross-motions for summary judgment that Transit's Regulation and the discharge of the Plaintiffs were in violation of their Fifth Amendment rights. In response to a motion of D.C. Transit, the district judge issued an order which found that the court's Fifth Amendment ruling "involves a controlling question of law as to which there is substantial ground for difference of opinion," and that an appeal from it may materially advance termination of

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[1] "Their non-conformity consisted of sideburns extending approximately two inches below their earlobes and . . . in 'mutton chop' fashion toward their mouths," the judge found.

[2] D. C. Transit Regulation #70-67 states:

(1) Employees must be clean and neat and operators must be clothed in full regulation uniform.

(2) Employees must be clean shaven (exceptions: a moustache may be worn provided that it is neatly trimmed, follows the contour of the upper lip and does not exceed to a point lower than a horizontal line projected from the bottom of the lower lip; (a) a dickey (slang), a patch of hair worn just below the center of the lower lip, may be worn provided that it does not exceed ½" in width, length and protrusion).

(3) Hair must be trimmed neatly. It must not be allowed to cover the ears or extend over the neck collar.

(4) Sideburns must be trimmed neatly and are not to exceed a point lower than ½" below the earlob.

(5) Beards, goatees and any item not covered above are not permissible.

the litigation, see 28 U.S.C. § 1292(b). The corporate defendants[3] have brought this appeal from the partial summary judgment granted Plaintiffs. We have accepted jurisdiction over this interlocutory appeal. The respective parties on brief agree that the Fifth Amendment determination presents the sole issue before us. We reverse and remand with directions that judgment be entered in favor of the appellants and that Plaintiffs' complaint be dismissed.

I

The district judge concluded that Plaintiffs' claim based on statutory grounds had failed. Specifically he ruled that "Regulation #70-67 does not discriminate against persons because of their race or sex and provides no basis for a claim cognizable under 42 U.S.C. § 1981 or § 2000e-2." Moreover, since the District of Columbia is not a "State or Territory" within the meaning of 42 U.S.C. § 1983, the Plaintiffs "are entitled to no relief under that statute," citing *District of Columbia v. Carter*, 409 U.S. 418 (1973).[4] Succinctly the district judge thus ruled before turning to the Plaintiffs' claim of denial of substantive due process under the Fifth Amendment.

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[3] D.C. Transit System, Inc., was a privately owned corporation organized under legislation appertaining to the District of Columbia; Washington Metropolitan Area Transit Authority (herein, WMATA) was created pursuant to an interstate compact, authorized by Pub.L. 89-774, 80 Stat. 1324, 1966, and reached the District, and certain areas in Virginia and Maryland. WMATA acquired certain assets of D.C. Transit as of January 14, 1973, and was not added as a party to this action until March 12, 1973.

Transit terminated the service of appellee Brown on September 22, 1971, and of appellee Gray on October 7, 1971.

[4] See Fagan v. National Cash Register Co., 157 U.S.App.D.C. 15, 481 F.2d 1115 (1973); cf. Dodge v. Giant Food, Inc., 160 U.S.App.D.C. 9, 488 F.2d 1333 (1973); Boyce v. Safeway Stores, Inc., 351 F.Supp. 402 (D.D.C. 1972); Baker v. California Land Title Co., No. 72-2568 (CA 9, Dec. 4, 1974).

Plaintiffs had claimed that Regulation No. 70-67 would have forced them to modify their facial hair style, and so was an "extreme and gross suppresssion of them as black men and [was] a badge of slavery" depriving them "of their racial identity and virility." But there were 1800 employees, 1100 of whom were black, all others were white, indeed there were three women bus drivers. At the time the Plaintiffs were terminated, the regulation had been invoked against certain white drivers as well, at least one of whom had thereupon brought his facial hair style into conformity. The district judge specifically had found that there was no discrimination "against persons because of their race or sex," text *supra*.

Even so, as the judge initiated his inquiry, his opinion epitomized his premise thus:

> The right of an adult to wear his hair in the fashion of his own choosing . . . has been identified as an aspect of liberty which is protected from unwarranted government interference.

II

It is clear enough that the district judge perceived Transit as "operating under an exclusive franchise" which "could have no concern" as to how its bus drivers might wear their hair "as an aspect of liberty which is protected from unwarranted government interference." The judge saw Transit's grooming regulation as an "interference" with Plaintiffs' rights. In that context, the trier viewed his problem, apparently, as one of balancing the respective interests of the Plaintiffs in contrast to the position of Transit.

In the first place, that Transit was operating under an "exclusive franchise" surely lacks controlling significance. It was a private corporation, privately funded, and so had no different status as such an entity than is possessed by any corporation organized under the laws

of the District of Columbia or one created pursuant to a special act of Congress. Transit's status as a legal entity was no different from that of the National Cash Register Company or that of Giant Food, Incorporated, or Safeway Stores, Incorporated, all heretofore involved in varying respects.[5] True it is that Transit was subject to regulation by the Public Utilities Commission, but that fact, again, is immaterial here. For one thing, the Commission had exercised no jurisdiction over this subject matter. Moreover, there had not even been an application for relief presented to the Commission so that it might consider whether it could or should exercise jurisdiction.

We have given consideration to *Public Utilities Comm'n v. Pollak*, 343 U.S. 451 (1952), reversing this court's position as announced in 89 U.S.App.D.C. 94, 191 F.2d 450 (1951). Capital Transit, the utility there involved, had a charter for the operation of a public transportation system on the streets of Washington, to be sure. In addition, however, the Commission had ordered an investigation of, and after hearings, had rejected Pollak's complaint against the exposure of the captive audience, the riding public, to the utility's broadcasting. The Court pointed out that the First and Fifth Amendments were applicable to and restrictive only of "the Federal Government[6] and not private persons," *id.* 343 U.S. 461.

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[5] See note 4, *supra*.

Compare the Court's observations as to the status of the utility in Jackson v. Metropolitan Edison Company, 95 S.Ct. 449, 454-57, (1974), as related to other Pennsylvania corporations.

[6] The Pollak Court noted that the grant of a monopoly to a private entity imposed no obligation on the State, even though the utility was bound to furnish services to the public. "Streetcars and busses are subject to the immediate control of their owner and operator and, by virtue of their dedication to pub-

Those Amendments nevertheless were considered because the Court saw "a sufficiently close relation between the Federal Government and the radio service," *id.* 343 U.S. 462, as to require scrutiny. It was noted that the Public Utilities Commission, pursuant to protests against the utility's radio program, had "ordered an investigation of it and, after formal public hearings, ordered its investigation dismissed on the ground that the public safety, comfort and convenience were not impaired thereby." *Id.* 343 U.S. 462. In short, under the circumstances developed in *Pollak*, the Court concluded that the Commission's action had been consistent with its discretion to act in the overall public interest.

The Court re-examined *Pollak*, *supra*, in *Jackson v. Metropolitan Edison Company*, 95 S.Ct. 449 (1974). Rejecting the claim that *Jackson* presented an instance of "state action", the Court recognized that there often is a close question as to whether particular action is "private" or "state action." Noting that the company was a privately owned public utility, the fact that it was

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lic service, they are for the common use of all of their passengers." 343 U.S. at 464.

Pollak as a passenger had sought to override the possible preference of other transit users and even the considered judgment of the federally authorized Public Utilities Commission. "The protection afforded to the liberty of the individual by the Fifth Amendment . . . does not go that far," *id.*, 343 U.S. at 465. The Court reasoned that the utility's practice against which Pollak had contended was not unlike the result of other management decisions as when a utility makes a change in its running schedules or in the location of its stops in the interests of a majority of its riders, even against the vigorous protests of the few who may be inconvenienced by the company-ordered changes. In short, the utility's action was "constitutionally permissible," *id.*, 343 U.S. at 466. Mr. Justice Black, concurring, observed that the "record shows no violation of the Due Process Clause of the Fifth Amendment." *Id.* at 466.

operating under a certificate of public convenience and necessity issued by the Pennsylvania Public Utilities Commission,[7] was not controlling. That a business is subject even to extensive state regulation does not by itself convert its action, vis-a-vis its customers, into that of the State.

Here Transit at the time of the discharge of these Plaintiffs was in precisely the same situation as the utility named in *Jackson*. Although it was heavily regulated, its actions were not, *ipso facto*, "state action." The Federal Government had not claimed control over the management decision in the adoption of the challenged regulation. The unreported opinion of the district judge noted that Regulation #70-67 had been "adopted in the interest of morale of employees [and] so as to be properly presentable to the public and in the interest of safety . . .". He then reasoned that Transit's "legitimate interest" in requiring its employees to be "properly presentable to the public" was limited to situations which would "affect the conduct of its business." He thus would superimpose the decision of a federal court upon a prerogative of

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[7] We can readily realize that such an isolated fact is not finally determinative. Considering such a determination to present a close question, Judge Friendly sagely observed that

> determination of government action in such cases as this hinges on the weighing of a number of variables, principally the degree of government involvement, the offensiveness of the conduct, and the value of preserving a private sector free from the constitutional requirements applicable to government institutions. Wahba v. New York University, 492 F.2d 96, 102 (2 CA 1974).

In Jackson, text *supra*, the Court stated the test thus:

> [T]he inquiry must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself . . . . *Id.*, 95 S. Ct. at 453.

Transit's management. In short, the district judge simply would have denied the employer's right to prescribe reasonable grooming regulations for its employees in their constant contact with the public.

Of course individual citizens have a constitutional right to wear beards, sideburns and mustaches in any form and to any length they may choose. But that is not a right protected by the Federal Government, by statute or otherwise, in a situation where a private employer has prescribed regulations governing the grooming of its employees while in that employer's service. The wearing of a uniform, the type of uniform, the requirement of hirsute conformity applicable to whites and blacks alike, are simply non-discriminatory conditions of employment falling within the ambit of managerial decision to promote the best interests of its business.

Heretofore we have summed up the problem in terms of *private* employment thus:

> But equally it seems obvious to us, that one seeking an employment opportunity as in *our* situation where hair length readily can be changed, may be required to conform to reasonable grooming standards designed to further the employing company's interest by which that very opportunity is provided. There is no suggestion that the company regulation is pretextual or that it has been derived otherwise than in complete good faith.[8] (Emphasis in original)

We are aware that Transit may be distinguishable from a private employer who has extensive private competition and adopts grooming standards in the interest of

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[8] Fagan v. National Cash Register Co., *supra* note 4, 157 U.S.App.D.C. at 25, 481 F.2d at 1125. *See also* Willingham v. Macon Telegraph Publishing Company, 352 F. Supp. 1018 (M.D.Ga. 1972), reversed, 482 F.2d 535 (5 CA 1973), in turn reversed *en banc* 11-4, —— F.2d —— (5 CA Feb. 12, 1975).

keeping up with or gaining ground on that competition.[9] But even a public utility with monopoly or quasi-monopoly status has an interest in consumer acceptance of its services. A utility's grooming regulation governing its employees does not have the nexus with the state necessary for its classification as "state action" subject to due process restraints where, as here, there has been no involvement whatever of an agency of government, federal or "state." We find here no order, no investigation and hearing, not even an application to the agency to determine whether it could or should consider the possibility that some element of the public interest was adversely affected by the company's regulation.

We are satisfied that the district judge correctly concluded that Plaintiffs were entitled to no relief under 42 U.S.C. §§ 1981, 1983 or 2000e-2.[10] We are equally

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[9] Fagan v. National Cash Register Co., *supra* 157 U.S.App. D.C. at 25, 481 F.2d at 1125: "Good grooming regulations reflect a company's policy in our highly competitive business environment."

Yet other cases treating of differing situations simply are not decisive as we hold that our case has presented no denial of due process under the Fifth Amendment.

[10] We here have not been concerned with the reasonableness *vel non* of school hair regulations or even with other situations involving "state" action. The district judge, however, had cited without specific application, certain cases, now mentioned only because we have considered all of them. But, we take as an example, his citation of the opinion of Mr. Justice Douglas who alone dissented from the denial of *certiorari* in Olff v. East Side Union High School District, 404 U.S. 1042 (1972), where he wrote in part

> It seems incredible that under our federalism a State can deny a student education in its public school system unless his hair style comports with the standards of the school board.

[Continued]

confident that there has been no "state action," such as is essential to establish a claim of denial of due process under the Fifth Amendment. Accordingly, on this aspect of the case, we will reverse and remand with directions that judgment be entered in favor of the appellants and that Plaintiffs' complaint be dismissed.

Reversed and remanded.

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[10] [Continued]
The opinion of the Ninth Circuit in the companion case of King v. Saddleback Junior College District, 445 F.2d 932, 940 (1971) had said

> We do not believe that the plaintiffs have established the existence of any substantial constitutional right which is in these two instances being infringed.

Again the opinion below had cited Karr v. Schmidt, 460 F.2d 609 (1972), where the Fifth Circuit sitting *en banc* (after quoting Mr. Justice Black at 611, *and see* his memorandum at 401 U.S. 1201, 1202 (1971)) announced as a *per se* rule that the district courts were to dismiss a complaint which had merely alleged the constitutional invalidity of a high school hair and grooming regulation.

The Plaintiffs here had cited, as in the district court, Lindquist v. City of Coral Gables, 323 F. Supp. 1161 (S.D. Fla. 1971), where the plaintiff had relied in part upon 42 U.S.C. §§ 1981 and 1983. On the other hand, in another "sideburns" situation, Yarbrough v. City of Jacksonville, 363 F. Supp. 1176 (M.D. Fla. 1973), Judge Scott, 363 F.Supp. at 1180, explicitly refused to follow Lindquist v. City of Coral Gables, *supra*.

We are thoroughly aware of and have carefully considered yet other "state action" cases, not applicable here, such as Stradley v. Andersen, 478 F.2d 188, 191 (8 CA 1973); Dwen v. Barry, Commissioner, 483 F.2d 1126 (2 CA 1973), and Friedman v. Froehlke, 470 F.2d 1351 (1 CA 1972).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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EUGENE R. BROWN, *et al.*	*	
Plaintiffs	*	
v.	*	Civil Action No.
D. C. TRANSIT SYSTEM, INC.	*	2426-71
and	*	
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY	*	
Defendants	*	

MEMORANDUM OPINION

In this action seeking declaratory and injunctive relief and damages the plaintiffs challenge their discharge from employment as bus operators for defendant D. C. Transit System, Inc. ("D. C. Transit") and seek reinstatement to their positions with D. C. Transit's successor, Washington Metropolitan Area Transit Authority. ("WMATA").[1] For determination now by the Court are cross-motions for summary judgment.

The plaintiffs were terminated as employees of D. C. Transit because of failure to conform their facial hair to the styling required by D. C. Transit Regulation # 70-67.[2] Their non-conformity consisted of sideburns

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extending approximately two inches below their earlobes and extending in "mutton chop" fashion toward their mouths. They contend that the adverse action taken against them under the authority of that Regulation violates rights assured to them by 42 U.S.C. §§1981, 1983 and 2000e-2[3] and by the First, Fifth and Ninth Amendments to the Constitution.

Plaintiffs' claims under 42 U.S.C. §§1981, 1983 and 2000e-2 are without merit. While there has been sufficient regulatory supervision by the District of Columbia over the past operations of D. C. Transit and the present operations of WMATA to consider the actions of these bodies to be under color of law, *Public Utilities Commission of the District of Columbia v. Pollak*, 343 U.S. 451, 462 (1952), the District of Columbia is not a "State or Territory" within the meaning of 42 U.S.C. §1983 and plaintiffs are entitled to no relief under that statue [sic]. *District of Columbia v. Carter*, 93 S. Ct. 602, 603-4 (1973). Furthermore, Regulation #70-67 does not discriminate against persons because of their race or sex and provides no basis for a claim cognizable under 42 U.S.C. §1981 or §2000e-2.

Because plaintiffs' claims based on statutory rights have failed the Court will consider the constitutional issues, the most serious of which is premised on the denial of substantive due process under the Fifth Amendment. The question is whether Regulation #70-67 deprives plaintiffs of rights protected by that Amendment, and if so, whether there is a sufficiently substantial government interest which justifies such a deprivation.

The right of an adult to wear his hair in the fashion of his own choosing, a matter which has proviked

considerable judicial concern, has been identified as an aspect of liberty which is protected from unwarranted government interference. *Lansdale v. Tyler Junior College*, 470 F.2d 659, 664 (5th Cir. 1972; *Karr v. Schmidt*, 460 F.2d 609, 615 n. (5th Cir. 1972); *Richards v. Thurston*, 424 F.2d 1281, 1285 (1st Cir. 1970); *Breen v. Kahl*, 419 F.2d 1034, 1036 (7th Cir. 1969); *Conard v. Goolsby*, 350 F.Supp. 713, 717 (N.D. Miss. 1972); *Lindquist v. City of Coral Gables*, 323 F.Supp. 1161, 1163 (D. Montana 1971).[4] In order to justify its interference with plaintiff's rights, D. C. Transit, in an affidavit by Thomas S. Trimmer, Vice President of Transportation Operations, asserts that Regulation #70-67 was ". . .adopted in the interest of morale of employees, so as to be properly presentable to the public, and in the interest of safety. . . ." On the other hand WMATA, in its Statement of Material Facts as to Which There is No Genuine Issue, asserts that it ". . .has no policy, regulation or rule concerning appearance of employees."

As to the first asserted justification, except in unusual circumstances which are clearly not present, this Court perceives no rational relation between the safety of bus operations and the appearance of an operator's hair. As to the second, D. C. Transit's legimate [sic] interest in regulating the appearance of its operator's hair for the purpose of making them "properly presentable to the public" is limited to those situations when an operator's hair will affect the conduct of its business. Here D. C. Transit was operating under an exclusive franchise and, in view of contemporary hair styles, could have no concern that its bus operators' hair would affect the conduct of its

business except in extreme cases. Nor has D. C. Transit brought to the Court's attention any credible authority to support its contentions. Absent such a showing or that any unusual conditions exist the regulation is irrevelant to any legitimate interests of the defendants and is violative of the employees' personal rights. Under these circumstances impairment of an employee's right to a personal determination of his appearance must be based on an interest far more substantial than the personal predelictions of management, employees, or others as to what hair styles are "proper." The desire of an adult to fashion his facial hair is a personal matter and the proscriptions of D. C. Transit, unrelated to satisfactory job performance, are necessarily subject to close judicial scrutiny.

Since there is no interest asserted by D. C. Transit which is legally sufficient to sustain its infringement of plaintiffs' liberty to determine their appearance, Regulation #70-67 and actions taken under its authority are adjudged to be in violation of plaintiffs' Fifth Amendment rights.

Accordingly, partial summary judgment will be entered in favor of the plaintiffs for declaratory and injunctive relief. Summary judgment in favor of the defendants will be denied. Plaintiffs shall submit an appropriate order within five days.

The question of the damages, if any, to which plaintiffs are entitled will be determined at a subsequent date. The parties shall submit memoranda of points and authorities on that question within twenty days.

/s/ Barrington D. Parker
Barrington D. Parker
United States District Judge

May 3, 1973

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FOOTNOTES

1. WMATA was created in 1966 pursuant to the Washington Metropolitan Area Transit Authority Compact, Act of November 6, 1966, 80 Stat. 1324, D.C. Code §1-1431 (1967), and acquired certain of the assets of D. C. Transit on January 14, 1973, pursuant to the National Capital Area Transit Act of 1972, Act of October 21, 1972, 86 Stat. 999, *amending* D. C. Code §1-1431 (1967). On March 12, 1973 WMATA was added as a party in this proceeding.

2. D. C. Transit Regulation #70-67 states:

   (1) Employees must be clean and neat and operators must be clothed in full regulation uniform.

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(2) Employees must be clean shaven (exceptions: a moustache may be worn provided that it is neatly trimmed, follows the contour of the upper lip and does not exceed to a point lower than a horizontal line projected from the bottom of the lower lip; (a) a dickey (slang), a patch of hair worn just below the center of the lower lip, may be worn provided that it does not exceed 1/2" in width, length and protrustion).

(3) Hair must be trimmed neatly. It must not be allowed to cover the ears or extend over the neck collar.

(4) Sideburns must be trimmed neatly and are not to exceed a point lower than 1/2" below the earlob [sic].

(5) Beards, goatees and any item not covered above are not permissible.

3. Civil Rights Act of May 31, 1870, c. 114, §16, 16 Stat. 144, Rev. Stat. §1977, 42 U.S.C. 1981 (1970); Ku Klux Klan Act of 1871, Act of April 20, 1871, c. 22, §1, 17 Stat. 13, Rev. Stat. §1979, 42 U.S.C. §1983 (1970); Civil Rights Act of 1964, Title VII, Act of July 2, 1964, §703, 78 STat. 255, 42 U.S.C. 2000e-2 (1970), *as amended*, Equal Employment Opportunity Act of 1972, Act of March 24, 1972 §2 *et seq.*, 86 Stat. 103.

4. *See also* Olff v. East Side Union High School District, 404 U.S. 1042, 1044 (1972) (Douglas, J., dissenting from denial of cert.).

[Caption Omitted in Printing]

ORDER

This cause having come on to be heard on the motions of the defendants for summary judgment and

the cross motion of the plaintiffs for summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the Court having considered the memoranda of points and authorities, affidavits and argument of counsel in support thereof and in opposition thereto, it is, this 15th day of May, 1973,

ORDERED that the motions of the defendants for summary judgment be and hereby are denied; and it is

FURTHER ORDERED that the motion of the plaintiffs for summary judgment be and hereby is granted to the extent that:

(1) D. C. Transit System, Inc. Regulation #70-67 is DECLARED to be an unconstitutional violation of the rights of the plaintiffs under the Fifth Amendment;

(2) defendants are permanently ENJOINED from enforcing Regulation #70-67; and

(3) defendant Washington Metropolitan Area Transit Authority is ORDERED to reinstate the plaintiffs to their former employment with full restoration of seniority.

/s/ Barrington D. Parker
Barrington D. Parker
United States District Judge

Copies to:

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AMENDED ORDER

Upon consideration of the motion of the defendant, Washington Metropolitan Area Transit Authority, for relief from Order pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, and the Court having considered the memoranda of points and authorities submitted by the parties, it is, this 14th day of June, 1973,

ORDERED that the Order entered May 15, 1973 by this Court is hereby amended by striking out subparagraphs (1) and (2) of the Order and inserting in lieu thereof the following:

"(1) Paragraphs two through five of D. C. Transit System, Inc., Regulation #70-67 are DECLARED to be an unconstitutional violation of the rights of the plaintiffs under the Fifth Amendment;

(2) defendants are permanently ENJOINED from enforcing paragraphs two through five of Regulation #70-67; and"

/s/ Barrington D. Parker
Barrington D. Parker
United States District Judge

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[Caption Omitted in Printing]

ORDER

A Memorandum Opinion ard an Order granting partial summary judgment in favor of the plaintiffs were entered in this case on May 3, 1973 and May 15, 1973, respectively. Defendant D.C. Transit System, Inc. moved the Court, pursuant to 28 U.S.C. §1292(b), for a finding that its Order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the litigation. Upon consideration of the motion of the defendant and the memoranda of points and authorities submitted by the parties, the Court is not of the opinion that an immediate appeal from the Order may materially advance the ultimate termination of this litigation. Accordingly, it is this 14th day of June, 1973

ORDERED that the motion of the defendant, D. C. Transit System, Inc. for a finding pursuant to 28 U.S.C. §1292(b) be and hereby is denied.

/s/ Barrington D. Parker
Barrington D. Parker
United States District Judge

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POINTS AND AUTHORITIES

1. *Gerald Brent Fagan vs. National Cash Register Company*, United States Court of Appeals, for the District of Columbia Circuit, Case Number 71-1243.

/s/ Harold Smith
Harold Smith
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ORDER

The Court having considered the oral motion of defendant, D. C. Transit System, Inc., joined in by co-defendant, Washington Metropolitan Area Transit Authority, to vacate its Order of June 14, 1973, denying the motion of defendant, D. C. Transit System, Inc. for a finding by the court that the Order embracing the Court's ruling in its Memorandum

Opinion involves a controlling question of law so that an immediate interlocutory appeal could be taken under the Provisions of Title 28 U.S.C.A., Section 1292(b), it is by the Court this 19th day of July, 1973,

ORDERED, that the Order of the Court under date of June 14, 1973 be and is hereby vacated.

/s/ Barrington D. Parker
JUDGE

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ORDER

The Court having reconsidered the motion of defendant, D. C. Transit System, Inc. for a finding in its Order embodying its ruling in its Memorandum Opinion that such Order involves a controlling question of law as to which there is substantial ground for difference of opinion and that immediate appeal from said Order may materially advance the ultimate termination of this litigation, it is by the Court this 19th day of July, 1973,

ORDERED, that it is the opinion of this Court that its ruling in its Memorandum Opinion involves a controlling question of law as to which there is substantial ground for difference of opinion and that an appeal from the Order of this Court embodying the Court's ruling in its Memorandum Opinion may

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materially advance the ultimate termination of this litigation, pursuant to Title 28 U.S.C.A., Section 1292(b).

/s/ Barrington D. Parker
JUDGE

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